

# Staff Capstone Report for Proceeding No. 22M-0171ALL

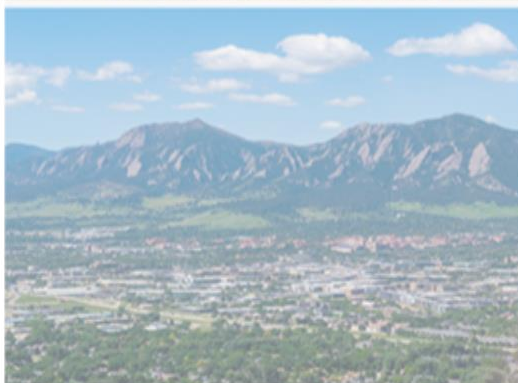
SENATE BILL 21-272 EQUITY IMPLEMENTATION



**COLORADO**

**Department of  
Regulatory Agencies**

Public Utilities Commission



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## Agency Mission

The Colorado Public Utilities Commission serves the public interest by effectively regulating utilities and facilities so that the people of Colorado receive safe, reliable, and reasonably-priced services consistent with the economic, environmental, and social values of our state.

## Acknowledgments

This report was prepared by a team of Commission staff<sup>1</sup> and was informed by a wide range of input. Staff would like to thank everyone who participated during this proceeding and helped inform this report, including stakeholders and panelists who provided written and oral comments and presentations for consideration. Staff would also like to thank Commissioner Megan Gilman, who served as hearing commissioner for this proceeding.

Staff further thanks the following individuals and staff for their contributions to this process:

- Members of the PUC's Fixed Utilities Team, the PUC's Research and Emerging Issues Unit, and the PUC's and Department of Regulatory Agency's Communications Team who contributed time, ideas, and support to the work plan and this report
- The PUC's executive leadership, who contributed to the report through an ongoing Senate Bill 21-272 Implementation Steering Committee
- Justin Schott and Tyler LaBerge with the University of Michigan's Energy Equity Project, who helped guide the Agency Equity Framework
- Members of the Commission's ongoing Energy Advisory Focus Group, who continue to share their knowledge, concerns, and hopes for a more equitable future
- Joel Minor and Rani Kumar with the Colorado Department of Public Health and Environment Environmental Justice Program, who provided their experience and expertise
- Arnav Seth and Priscilla Sawicki, who contributed to the report during their internships
- Subject matter experts, fellow equity practitioners, and staff at other state utility commissions who lent their knowledge and insights to staff's work plan.

*This report represents the continuously evolving views of staff and is not a Commission decision or final action. The report will be reviewed by Hearing Commissioner Megan Gilman, who will consider whether to issue a recommended decision that closes the proceeding and directs staff to bring back rule proposals to officially begin updating Commission rules and proceedings. Alternatively, Commissioner Gilman may identify additional needs and steps in this proceeding. Stakeholders are welcome to continue to provide comments on the report using the methods available at [puc.colorado.gov/equity](https://puc.colorado.gov/equity).*

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<sup>1</sup> The members of Commission staff assigned to the Equity Initiatives Group includes Kelly Crandall and Jessie Ciulla of the Advisory Section and Holly Bise of the Telecommunications Section.

## Executive Summary

Senate Bill (“SB”) 21-272 directs the Commission to consider how best to provide equity, minimize impacts, and prioritize benefits to disproportionately impacted communities, and to address historical inequalities in all of its work.

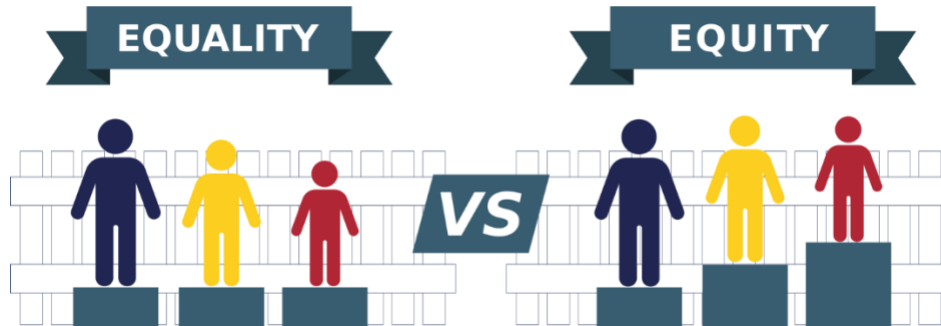


Figure 1: The difference between equal and equitable treatment of needs

The Commission traditionally serves the public interest by making decisions that provide Coloradans safe, reliable, and reasonably-priced services while also providing utilities an opportunity to earn a fair return for shareholders. The Commission’s decisions, which span complex technical and economic issues, are informed by a hundred years of case law. The passage of SB 21-272 represents an opportunity for growth for the Commission – it introduces a new decision-making paradigm by mandating that the Commission consider how best to provide equity in all of its work. It also introduces changes that will impact an already rapidly evolving technical and economic landscape for many of the utilities the Commission regulates. In the three years since the legislation was passed, stakeholders have recommended many options for how the Commission can accomplish this directive. Stakeholders strongly emphasized transparency; meaningful education and communications; and prioritizing an equitable, affordable transition to a decarbonized future.

On April 28, 2022, by Decision No. C22-0239, the Commission opened Proceeding No. 22M-0171ALL to inform its implementation of SB 21-272. The decision set initial proceeding objectives and sought written comments. Commissioner Megan Gilman was subsequently assigned as the Hearing Commissioner to conduct the proceeding. On September 15, 2023, by Decision No. R23-0625-I, Commissioner Gilman directed a team of Commission staff to create and execute a work plan to engage stakeholders on the implementation of SB 21-272 and to file a capstone report summarizing information they learned in the process. This capstone report summarizes comments filed in the proceeding, identifies potential issues which may require further legislative direction, recommends changes the Commission can make to its rules and policies to consider equity in all of its work,<sup>2</sup> and addresses whether enough information has been gathered that the Commission can initiate one or more rulemakings.<sup>3</sup>

<sup>2</sup> The recommendations attributed to the assigned member of staff do not reflect any official position or findings of the Commission or of the advisory staff and trial staff as defined in 4 *Code of Colorado Regulations* 723-1-1004 of the Commission’s Rules of Practice and Procedure.

<sup>3</sup> Decision No. R23-0625-I, issued September 15, 2023, at ¶ 15.

Participation in this proceeding has been significant. In the course of this proceeding, Commissioner Gilman or staff hosted 15 events, workshops, or public comment opportunities (see [Appendix A](#)). An estimated 213 unique individuals participated in proceeding activities, and the Commission received about 40 written comment filings and hundreds of oral comments at remote and in-person events.

Commissioner Gilman also directed staff to assess the “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.”<sup>4</sup> [Appendix B](#) describes the outreach plan for this proceeding and summarizes positive results, opportunities for improvement, operational challenges, and lessons learned. Notably, SB 21-272 did not include dedicated funding or full-time staffing for the Commission to undertake this area of work.

## Report Roadmap

Drawing from the language of SB 21-272, the sections of this report address the following issues:

- Overall takeaways
- Enhancing procedural equity through communications, education, outreach, and engagement
- Identifying disproportionately impacted communities
- Minimizing impacts, prioritizing benefits, and ensuring proportionate access
- Equitable outcomes for industries regulated by the Commission

Each thematic section includes a summary of stakeholders’ comments and staff recommendations. Stakeholders provided extensive and thoughtful comments throughout this proceeding. While every comment has been reviewed, this report focuses on the comments that are most actionable or that surface a predominant concept or theme. The full record of all comments received by the Commission in Proceeding No. 22M-0171ALL is publicly available for review through the Commission’s E-Fileings System.

Staff recommendations relate to prospective rules and improvements to Commission processes, managerial actions that could be implemented by the agency director, and actions that may be better suited for implementation by, or are dependent on, entities outside the Commission—including but not limited to regulated entities, other state agencies, and the Colorado General Assembly. These staff recommendations are not intended to reflect the absolute or final sentiment on a topic. Rather, they are based on the data and information currently available and are expected to evolve over the course of further stakeholder engagement and consideration by the Commissioners.

The report attempts to align managerial actions with potential rules, but managerial actions may need to be revised as rules are finalized. PUC Director Rebecca White has already taken important steps, such as convening an Equity Advisory Focus Group, piloting improvements to the public comment hearing process to be more inclusive and transparent, and enhancing agency communications materials.

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<sup>4</sup> Decision No. R23-0625-I, issued September 15, 2023, at ¶ 15.

## Major Rulemaking Recommendations

As its next step to implement SB 21-272, staff recommends the Commission close this proceeding and initiate a rulemaking upon consideration of the recommendations in this report. The rulemaking should focus on changes to the Commission’s Practice and Procedure Rules (723-1) along with its Electric (723-3) and Gas (723-4) Rules. Staff presents four major concepts – amongst others – for consideration in this rulemaking.

### Designate Proceedings as “Equity Impact Proceedings”

Staff proposes the Commission adopt “equity impact proceedings” as a new category of proceeding. This would designate a proceeding as having significant potential equity impacts and a corresponding need for heightened procedural and substantive requirements to adequately consider the equity implications in the proceeding. This is a simpler approach than the multi-tier proposals staff initially discussed with stakeholders and would enable litigants and the Commission to better focus their equity efforts on the highest-impact cases. For cases with this designation, utilities would be required to present information about affected disproportionately impacted communities, incorporate pre-filing outreach, provide notice to 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. The Commission would also be required to discuss how it considered equity in its final decision.

Equity impact proceedings would initially focus on electric and gas cases, but other industries could be added in the future. While rules can identify typical cases that have significant, expected equity impacts, additional requirements could be added on a case-by-case basis to account for the dynamic nature of the energy system. Among the types of cases that could be categorized this way include electric resource plans, gas and electric distribution system plans, rate cases, applications regarding retail customer programs, applications for infrastructure located in or proximate to a disproportionately impacted community, or other applications that could impact the health or safety of a disproportionately impacted community. Accordingly, the rules would create an approach to identify where engagement and analysis should be focused to promote distributional equity. Even with this proposed approach, these additions would not be required for the majority of the 600 or so proceedings that are filed at the Commission each year, as many of them are administrative or compliance filings for which current procedures are sufficient.

### Require Utilities to Develop “Energy Equity Plans.”

Staff recommends adopting a new requirement that electric and gas utilities develop and submit for Commission approval an “energy equity plan,” which would be a multi-year, comprehensive equity assessment and prioritization plan. The energy equity plan would clarify which communities should be considered disproportionately impacted for each utility. However, it would also have an important role in integrating equity and affordability considerations. Critical to this application would be requiring 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. The energy equity

plan would set a framework for proportionate access to program benefits that could be detailed in future applications for individual retail customer programs. It would also provide a forum to clarify which upcoming proceedings should be considered equity impact proceedings. Ultimately, the utilities' energy equity plans would help streamline outreach and processes prior to and during follow-on designated equity impact proceedings, potentially by requiring utilities to develop proposals for equity advisory groups. Energy Equity Plan concepts are raised through the report and further scoped in [Appendix C](#).

### **Implement Practice and Procedure Changes.**

In addition to these concepts, staff recommends that the Commission consider making targeted modifications to the Practice and Procedure Rules to improve procedural equity in how cases are conducted at the Commission and to more clearly outline and explain how a typical case proceeds. This effort would recognize that there are many functions of the Commission that are prescribed and set out in statute, such as its role as an independent judge in proceedings, which cannot be modified by administrative rules. However, staff has identified several potential adjustments to the Commission's processes that could improve equity. These include changes to improve opportunities for meaningful stakeholder engagement, a requirement to provide more information about how potential parties propose to represent disproportionately impacted communities or seek equitable outcomes when they intervene in a case, and enhancements to the notice requirements for utilities and the Commission.

### **Adopt Key Definitions in Rule**

Staff recommends the Commission add new rule definitions for the key terms arising in legislation such as "disproportionately impacted community" and "retail customer program." These definitions should balance clarity with productive flexibility so they can evolve to reflect statutory changes or include communities with common conditions that bear inequitable burdens. Staff also proposes a flexible definition of the term "equity." Rather than adopting one definition for "equity," the Commission should consider developing several descriptive terms for particular uses such as "equitable distribution of benefits," "distributive equity," "procedural equity," and other similar terms. The intent of these definitions would be to describe how "equity" is measured and achieved in these different contexts.

These concepts are discussed in more detail throughout the staff recommendations below.

### **Next Steps**

Proceeding No. 22M-0171ALL is a "pre-rulemaking" proceeding meant to better understand the issues the Commission must consider when implementing SB 21-272. This report will enable the Hearing Commissioner to determine whether staff has gathered adequate information to move to a rulemaking proceeding. If the Hearing Commissioner believes the Commission is ready to move to a rulemaking, and the full Commission agrees, this proceeding will be closed. Staff will then work with the Commissioners to prepare proposed rules, which will be issued in a new proceeding. Stakeholders will have further opportunities to comment and suggest revisions to proposed rule changes in that rulemaking proceeding. This process will be ongoing and may include multiple rule iterations over time as the Commission learns by experience and adjusts its rules and processes to be more equitable and inclusive.

Many stakeholders gave significant time and input during this proceeding. This capstone report represents the next of many steps forward as the Commission improves its consideration of equity and disproportionately impacted communities. We look forward to further ideas and refinements from stakeholders during the rulemaking process.

## Background

This section provides a brief background on the equity requirements established by SB 21-272 and other equity-related activities within the State of Colorado and the agency.

### Legislative Requirements

#### a. SB 21-272 Requirements

SB 21-272 directs the Commission to take numerous actions related to equity. First, the legislation states:

*“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.”<sup>5</sup>*

This resulted in staff-led workshops to determine how stakeholders conceptualize impacts and benefits and explore how historical inequalities across regulated industries are currently considered. Next, the legislation states:

*In promulgating these rules, “the Commission shall identify disproportionately impacted communities. In identifying the communities, the Commission shall consider minority, low-income, tribal, or Indigenous populations in the state that experience disproportionate environmental harm and risks resulting from such factors as increased vulnerability to environmental degradation, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or a lack of positive environmental, health, economic, or social conditions within these populations.”<sup>6</sup>*

This led to workshops exploring state tools available to identify and define disproportionately impacted communities. Third, the legislation states:

*“When making decisions relating to retail customer programs, the Commission shall host informational meetings, workshops, and hearings that invite input from disproportionately impacted communities . . . .”<sup>7</sup>*

This led to staff-led opportunities for stakeholders to share how they define retail customer programs and efforts by staff to pilot new meeting formats. Fourth, the legislation states:

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<sup>5</sup> § 40-2-108(3)(b), C.R.S.

<sup>6</sup> § 40-2-108(3)(c)(I), C.R.S.

<sup>7</sup> § 40-2-108(3)(c)(II), C.R.S.



*“When 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.”<sup>8</sup>*

This led to an assessment of where other mandate create equity requirements in energy programs and their relationship to SB 21-272 requirements, and opportunities to understand how stakeholder conceptualize proportionate access. The legislation also set an initial statutory definition for disproportionately impacted communities.

**b. HB 21-1266 and the Environmental Justice Action Task Force**

HB 21-1266 created a statewide Environmental Justice Action Task Force (“Task Force”) authorizing up to 27 members from community organizations, industry, labor, state agencies, and other experience. The Task Force met from December 2021 through November 2022 and issued a final report of recommendations on state agency activities related to equity and environmental justice (“Task Force Report”).<sup>9</sup> The Commission was represented by former Director Doug Dean in this process. The Task Force was facilitated by a team at the Colorado Department of Public Health and Environment (“CDPHE”) which is now evolving into the Office of Environmental Justice.<sup>10</sup> This provides internal advice and guidance to other state agencies on engagement on disproportionately impacted communities, as well as providing technical assistance, such as by maintaining the Colorado EnviroScreen (see Figure 2) mapping tool.<sup>11</sup>

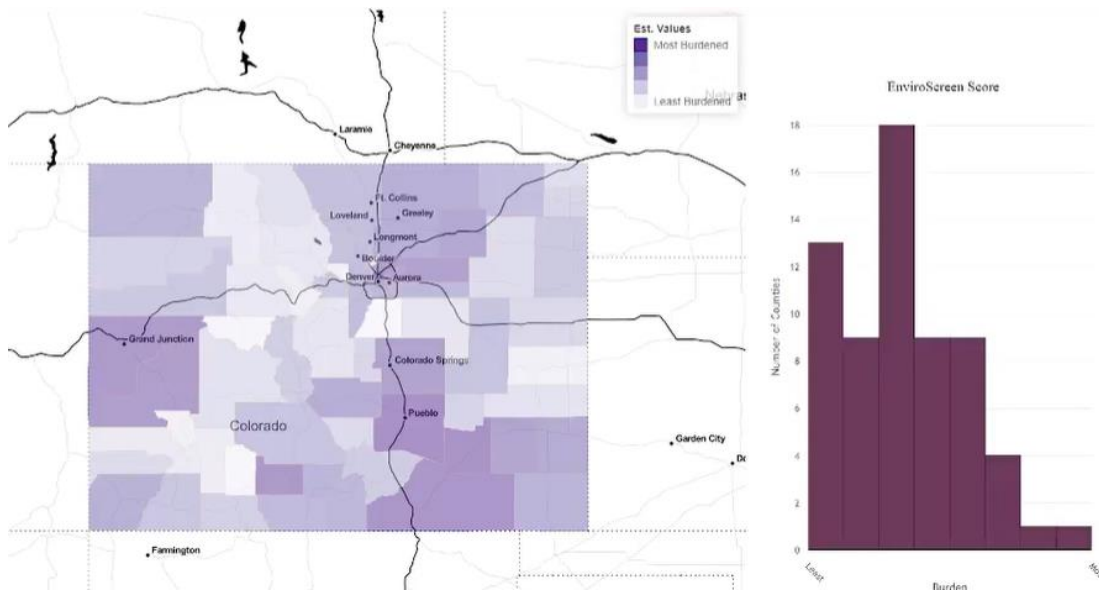


Figure 2: Colorado's EnviroScreen Mapping Tool Showing Relative Burden by Geographical Area

<sup>8</sup> § 40-2-108(3)(c)(II), C.R.S.

<sup>9</sup> Colorado Environmental Justice Action Task Force, Final Report of Recommendations (November 14, 2022), filed November 14, 2022 (Task Force Report).

<sup>10</sup> § 25-1-133.5(1)(a), C.R.S. (per HB 24-1338).

<sup>11</sup> CDPHE, Colorado EnviroScreen, available at <https://cdphe.colorado.gov/enviroscreen>.

### c. HB 23-1233 Modification

The statutory definition of disproportionately impacted communities was originally established in SB 21-272 and then modified by HB 23-1233. The modification creates a uniform definition across state agencies, which were previously operating under unique definitions. HB 23-1233 sets forth a robust list of qualifying communities which emerged from discussions of the Task Force. It includes not only census block groups that qualify based on demographic thresholds, but also census block groups that have high EnviroScreen scores or are within federally recognized disadvantaged community census tracts. The definition also includes communities on the reservations of federally recognized Tribal Nations and mobile home parks<sup>12</sup>. Finally, HB 23-1233 also provides some flexibility for state agencies to find that communities with a history of environmental racism and current disproportionate health or other impacts, even if not within a particular census block group, can request treatment as a disproportionately impacted community.

### d. Other Relevant Legislation

Over the last few years, other state legislation was passed directing consideration of disproportionately impacted communities in the context of specific utility or Commission actions. These other legislative requirements may affect the decisions the Commission makes when it promulgates rules. These include, but are not limited to the bills described below:

- SB 21-272 directed renewable energy expenditures to be set aside for disproportionately impacted communities<sup>13</sup>
- SB 21-264 directed clean heat plans to prioritize investments to disproportionately impacted communities or income-qualified customers<sup>14</sup>
- HB 23-1281 directed the Commission to investigate a cumulative impacts analysis framework for clean hydrogen projects to assess their impact on disproportionately impacted communities<sup>15</sup>
- SB 24-218 requires certain electric utilities to identify hosting capacity for distributed energy resources within disproportionately impacted communities<sup>16</sup>
- SB 24-207 requires the Commission to seek input from representatives of disproportionately impacted communities to the course of making rules about inclusive community solar<sup>17</sup>
- HB 24-1030 authorizes the Commission to impose fines for certain rail safety violations, including assessment of some impacts to disproportionately impacted communities<sup>18</sup>

<sup>12</sup> Prior to the passage of HB 23-1233, mobile home parks were raised as embedded communities that should be considered disproportionately impacted communities. EJ Coalition, 2/23/2023, at 4-5.

<sup>13</sup> § 40-2-124(1)(g)(I)(D), C.R.S.

<sup>14</sup> § 40-3.2-108(4)(c)(V), C.R.S.

<sup>15</sup> § 40-2-138(2)(I), C.R.S. *See also* Attachment B to Decision No. R23-0009-I, issued January 6, 2023, for a full list of statutory references to disproportionately impacted communities and income-qualified utility customers.

<sup>16</sup> § 40-2-132.5(4)(c), C.R.S.

<sup>17</sup> § 40-2-127.2(8)(a)(VII), C.R.S.

<sup>18</sup> § 40-20-301 *et seq.*, C.R.S.

### Agency Activities to Date

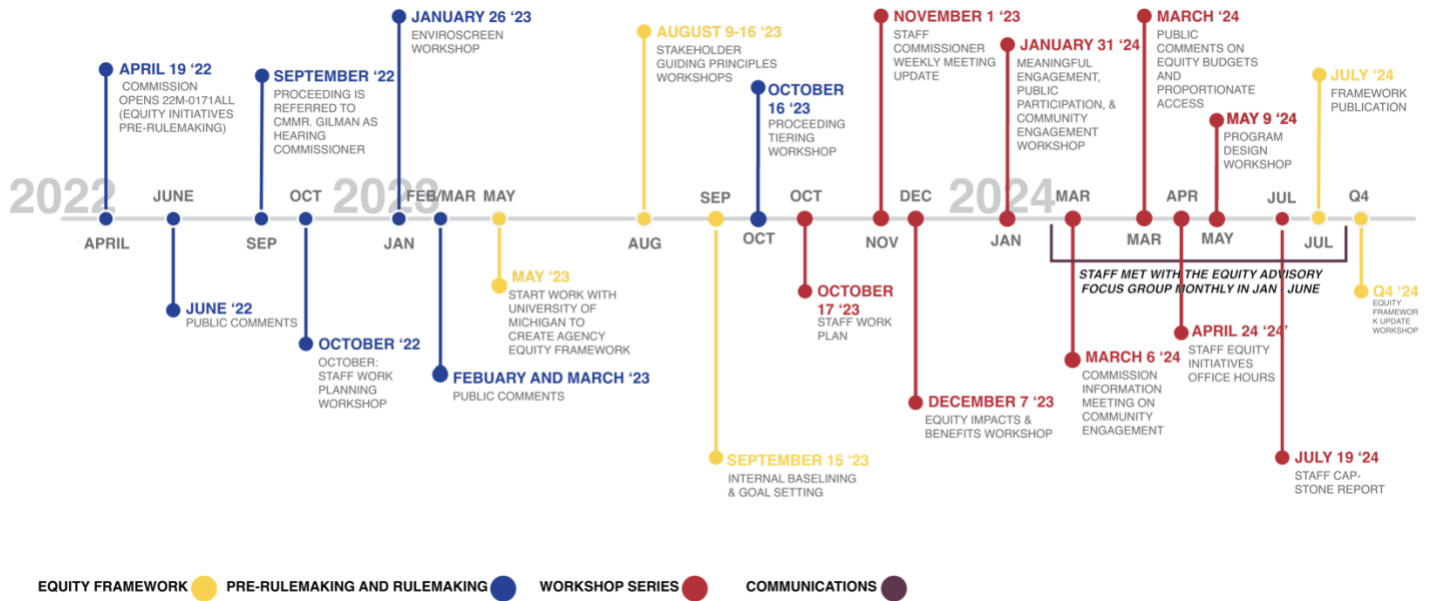


Figure 3 Timeline of Agency Activity

#### a. Proceeding No. 22M-0171ALL Scope and Staff Work Plan

The Commission opened Proceeding No. 22M-0171ALL by Decision No. C22-0239, issued April 28, 2022. The decision set a broad scope for the proceeding, requesting stakeholder comments on a variety of issues including definitions of equity and what constitutes equitable outcomes across regulated industries, the use of the EnviroScreen mapping tool, best practices in stakeholder engagement, and other topics. Commissioner Gilman was subsequently assigned as the Hearing Commissioner overseeing the proceeding. Staff held two work planning sessions on priorities for equity activities in October and November 2022. By Decision No. R23-0625-I, issued September 15, 2023, Hearing Commissioner Gilman directed staff to issue a work plan for this proceeding, including to provide transparent information and updates on upcoming workshops and to gather information that would culminate in this staff capstone report by June 2024. See [Appendix A](#) for a summary of activities within Proceeding No. 22M-0171ALL.

#### b. Agency Equity Framework

On August 27, 2020, Governor Jared Polis issued an Executive Order<sup>19</sup> that resulted in a State of Colorado Universal Policy on Equity, Diversity, and Inclusion (“EDI”).<sup>20</sup> State departments were subsequently

<sup>19</sup> EOD 2020 175, available at <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20175%20Equity%2C%20Diversity%2C%20and%20Inclusion%20for%20the%20State%20of%20Colorado.pdf>.

<sup>20</sup> Universal Policy on Equity, Diversity, and Inclusion in State Employment, available at <https://drive.google.com/file/d/1V10xTkfJ2CmVjZrZhik6EpKYyD4vtETM/view>.

required to develop EDI Action Plans as a result.<sup>21</sup> Concurrently, in response to Decision No. C22-0239, stakeholders provided comments recommending the Commission create an equity framework to guide agency activities like decision-making and equitable engagement.

Staff acted on these comments and worked with the Energy Equity Project at the University of Michigan to provide advice and guidance on the development of this framework. The framework provides an overview of the Commission, a description of each team and how equity impacts its work, a set of equity guiding principles, cross-cutting equity priority areas, cross-cutting opportunities to increase equity, and a reporting commitment. The framework grounds the guiding principles and opportunities to increase equity across four dimensions of equity: recognition equity, procedural equity, distributive equity, and restorative equity (See Figure 4).

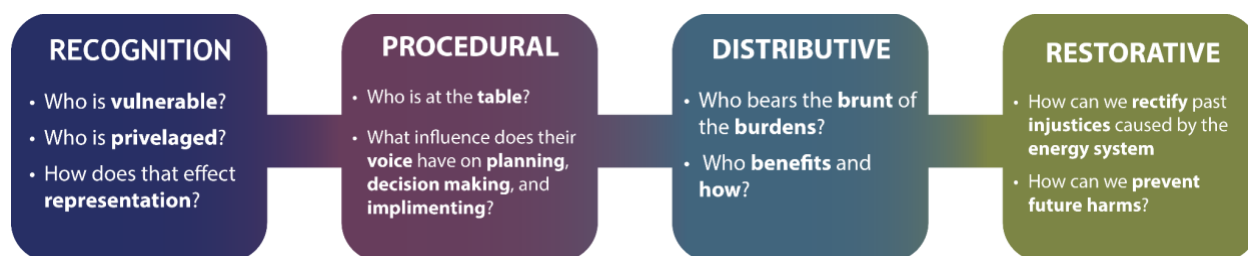


Figure 4: Energy Equity Project's Four Dimensions of Equity

The Agency Equity Framework is being released concurrently with this report and should be treated as a partner tool to implement many of the recommendations directed to the agency's Director. Notably, the framework only relates to the agency's activities led by the Director, not the Commission's decision-making as directed by rules and statute. However, the framework gives the agency a venue to coordinate how Commission rules and agency practices are structured to consider equity. In recent months, Director White has approved a Tribal Consultation Policy and changes to the agency's manual for decisions to promote more standardized and inclusive language. The Commission's website has also received a first round of updates to improve information access, the Commission's meetings have been moved from a delayed, audio-only platform to YouTube, and public comment opportunities have been re-initiated at in-person Commission meetings.

### c. Equity Advisory Focus Group

Early in the proceeding, stakeholders recommended that the Commission form an advisory group composed of members of disproportionately impacted communities.<sup>22</sup> Stakeholders characterized this as being critical to achieving meaningful community involvement and enabling community members to have an active voice in decision-making.<sup>23</sup> Several roles were proposed for this group. First, stakeholders suggested that the group could help identify communities that are potentially disproportionately

<sup>21</sup> The Department of Regulatory Agencies, which is the Commission's parent agency, has created and issued an EDI Action Plan.

<sup>22</sup> EJ Coalition Comments, 6/13/2022 at 25.

<sup>23</sup> Equity Framework Workshop Notes, 9/20/2023 at 39; Public Comment, 10/18/2022 at 7.

impacted outside of mapping tools like EnviroScreen.<sup>24</sup> Second, stakeholders suggested that the advisory group could help engage directly in disproportionately impacted communities, and create accountability.<sup>25</sup> Third, stakeholders suggested that the advisory group could help identify the potential impacts on disproportionately impacted communities of a new filing, during an initial intake process.<sup>26</sup> Finally, stakeholders suggested that the advisory group could identify community-based organizations to partner and engage with before, during, and after proceedings.<sup>27</sup> In addition to the Commission, stakeholders suggested that representatives of disproportionately impacted communities should serve on other advisory boards, such as the Utility Consumers Board of the Office of the Colorado Office of the Utility Consumer Advocate (“UCA”).<sup>28</sup>

In response, the agency initiated an Equity Advisory Focus Group in January 2024.<sup>29</sup> The Equity Advisory Focus Group was established by the Director to provide direction, feedback, and recommendations to Commission Staff as it implements its legislative mandate to consider equity in all its work. The Equity Advisory Focus Group has filled the following roles since its inception:

- Guide how the Commission improves its operational policies and procedures to increase the transparency, accessibility, and value of public engagement
- Advise on the development of plain-language educational materials, priorities for communications, and outreach plans for agency teams

The current group is a pilot that can be considered by the Director for long-term implementation.

## Key Themes from Stakeholder Comments and Recommendations

This initial section addresses overarching issues and takeaways from this process that staff highlights for consideration and adoption. Much of this section is cross-cutting across industries and agency functions and is foundational to considering equity and disproportionately impacted communities in the Commission’s work. For each subject area, the discussion is divided into two sections: those generated by stakeholders and those from the Commission’s staff.

### Stakeholder Perspectives and Recommendations

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#### **The Commission should distinguish “equity” from “equality.”**

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Stakeholders emphasized that equality does not have the same definition or meaning as equity. Stakeholders distinguished between these two terms, stating that equity requires providing different levels of support to achieve fairness in outcomes, and recognizes unequal starting places. Stakeholders proposed definitions of equity which broadly recognized the principle that we do not all start from the

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<sup>24</sup> RMI/WRA Comments, 6/13/2022 at 9.

<sup>25</sup> Public Service Comments, 7/8/2022 at 17; CEO Comments, 7/27/2022 at 7-8.

<sup>26</sup> CEO Comments, 7/27/2022 at 7-8.

<sup>27</sup> CEO Comments, 7/27/2022 at 7-8.

<sup>28</sup> Work Planning Workshops Notes, 10/18/2022 at 4.

<sup>29</sup> More information about the Equity Advisory Focus Group, including 2024 membership and meeting summaries, can be found at <https://sites.google.com/state.co.us/pucequityinitiatives/equity-advisory-focus-group>.

same place and must acknowledge and make adjustments to imbalances. However, specific definitions emphasized different aspects of equity like race, socioeconomic status, or historical treatment. For example, the City and County of Denver’s Office of Social Equity and Innovation states that equity is “the condition that would be achieved when race and other social identities can no longer be used to predict life outcomes, or the quality and depth of services received in the city.” The California Public Utilities Commission defines equity as “transforming the behaviors, institutions, and systems that disproportionately harm people of color.”

Stakeholders also cautioned against being too prescriptive about defining equity. Energy Outreach Colorado (“EOC”) and Public Service Company of Colorado (“Public Service”) caution against one-size-fits-all approaches to evaluating equity, given the breadth of SB 21-272.

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**The Commission should devote its resources and efforts in considering equity to the proceedings which are most likely to have a significant impact on disproportionately impacted communities.**

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At a workshop focused on considering equity in proceedings, staff presented data from Commission proceedings showing that only about 33% of the 500 to 600 total proceedings filed annually with the Commission relate to energy.<sup>30</sup> And of this 33%, many of these filings are utility advice letters, which are frequently administrative in nature and may seek to implement only minor, planned adjustments that follow from a different, litigated proceeding.

To enable the Commission to prioritize equity considerations in those proceedings with the greatest potential impact, staff proposed setting increased requirements for a subset of proceedings. There was general consensus that highlighting those proceedings with the most significant impacts and benefits to disproportionately impacted communities would be an effective use of resources and would help reduce the risk of stakeholder burnout. However, there was some disagreement with staff’s first attempt to categorize proceedings based on equity impacts.<sup>31</sup> Stakeholders raised concerns that in a utility rate case, where rates are changed uniformly for all residential customers, customers in disproportionately impacted communities or who are income-qualified may be more burdened by the effects of the change.<sup>32</sup>

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**Regulated electric and gas utilities are uniquely positioned to implement equity requirements.**

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While many comments focused on actions that the Commission should take to promote equity, stakeholders also recognized the role of regulated utilities—specifically electric and gas utilities—in increasing equity outcomes. Some stakeholders stated that utilities have had a role in creating inequality and therefore have a duty to address it and share in the costs of correcting wrongs.<sup>33</sup> Additionally, energy utilities usually initiate the cases the Commission adjudicates, and therefore have the opportunity to conduct effective outreach to understand relevant equity issues before they even make a filing to the Commission.<sup>34</sup> Stakeholders suggested that this pre-filing work is critical because once a case is before the

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<sup>30</sup> Case Tiering Workshop Slides, 10/17/2023 at 22.

<sup>31</sup> See *generally* Case Tiering Workshop Notes, 10/26/2023.

<sup>32</sup> Case Tiering Workshop Notes, 10/26/2023 at 48-49.

<sup>33</sup> UCA Comments, 6/28/2022 at 8.

<sup>34</sup> City of Boulder Comments, 6/13/2022 at 10-11; Public Comment, 10/18/2022 at 8; Case Tiering Workshop Notes, 10/26/2023 at 56.

Commission, there can be barriers to involving representatives of disproportionately impacted communities, including the cost of legal counsel and limited statutory timelines for the Commission to reach a decision.<sup>35</sup>

Stakeholders offered varying perspectives on the extent to which utilities should be incentivized, versus required, to meet equity objectives. In some cases, stakeholders suggested that there should be penalties for utilities who fail to meet certain levels of distributive equity.<sup>36</sup> In other cases, stakeholders suggested extensive reporting requirements and suggested metrics that could be used to assess whether, and how effectively, utilities engaged in outreach activities or enhanced equity associated with their programs.<sup>37</sup>

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**The Commission should specifically articulate how it has considered equity in its decisions.**

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Stakeholders indicated a desire for the Commission to clearly address how it considers equity when it makes a decision that invokes equity considerations. The Colorado Energy Office (CEO)<sup>38</sup> suggested that the Commission should discuss how it included public comments and impacts and benefits in deliberations and commemorate this through its final decision.<sup>39</sup> Other stakeholders suggested that it should be clear how equity factors will be weighed in any decision-making process.<sup>40</sup>

Similarly, stakeholders shared a desire for the Commission to “close the loop” on how public comments are considered in proceedings.<sup>41</sup> Many stakeholders recognize that public comments are not the only type of information used to inform decisions but are dissatisfied that, at present, they are often not captured in the Commission’s decision. This renders it impossible to determine how and whether the comments were reviewed and treated.

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**There is a critical need for increased interagency coordination.**

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The Commission is only one entity in an ecosystem that includes state and federal agencies, regulated entities, nonprofits, and service providers who are involved in making decisions that allocate impacts and benefits to different communities. Stakeholders raised two challenges with having multiple agencies addressing equity and environmental justice in their work.

First, impacts to disproportionately impacted communities are created in decisions made at many different agencies.<sup>42</sup> This makes it challenging to understand the suite of programs, assistance, or initiatives being created across agencies and even more challenging to ensure they are not duplicative and are delivering a set of optimal benefits to communities at least cost. This division can also make it harder to know where to ask questions or submit a complaint. Stakeholders recommended the Commission work with other state and local agencies to coordinate outreach and engagement, reduce

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<sup>35</sup> § 40-6-109.5, C.R.S.

<sup>36</sup> Equity Framework Workshops Notes, 9/20/2023 at 35.

<sup>37</sup> See, e.g., CEO Comments, 4/9/2024 at 18-19.

<sup>38</sup> CEO is housed within the Office of the Governor and participates in Commission proceedings.

<sup>39</sup> CEO Comments, 6/13/2022 at 13-16.

<sup>40</sup> Equity Framework Workshops Notes, 9/20/2023 at 35.

<sup>41</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 75.

<sup>42</sup> Case Tiering Workshop Notes, 10/26/2023 at 10.

potential duplication, and clarify the roles of various entities.<sup>43</sup> Stakeholders suggested the need for a “one stop shop” – that may not be appropriate to house in the Commission – for communities to find all the programs, funding, and other benefits they may qualify for.<sup>44</sup>

Second, state agencies have different types of expertise. When making decisions about public health and environmental impacts, it will be critical for the Commission to collaborate with other state agencies that have that expertise.<sup>45</sup> However, stakeholders also indicated that because of the Commission’s broad authority over essential services, its role in engaging disproportionately impacted communities may need to be even more comprehensive than that of other state agencies.<sup>46</sup>

**Staff Recommendations**

Recommendation	Explanation
<p><b>The best approach at this time is to not assign one definition for “equity” in the Commission’s rules; instead, adopt rules that identify how and when the Commission considers equity in its decision-making.</b></p>	<p>Administrative rules take time to change, and attempting to prescribe a single, specific definition of the term “equity” for the first SB 21-272 rulemaking may artificially constrain growth in procedural and distributive outcomes. Staff instead recommends the Commission propose rules that address two ways equity is described.</p> <p>First, there may be merit in creating a flexible term like “equitable distribution” or “dimensions of equity” for use in Commission proceedings. The Washington Utilities and Transportation Commission’s rules define “equitable distribution” as a “fair, just, but not necessarily equal allocation of benefits and burdens from a utility’s transition to clean energy.”<sup>47</sup> Similarly, the Agency’s Equity Framework defines procedural, distributive, recognition, and restorative equity to assess who is and is not present or benefitting from processes and outcomes. This more flexible approach would provide the benefit of distinguishing between equity and equality, consistent with stakeholders’ recommendations, while not overly constraining specific applications.</p> <p>Second, Staff recommends outlining in rule how Commission decisions could identify and explain how equity implications are considered for disproportionately impacted communities, at minimum for designated equity impact proceedings. This would be similar to the Commission’s existing rules for Electric Resource Plan Phase I and II decisions that outline certain concepts for Commission consideration, without prejudging the weight that each issue should be accorded in the absence of specific</p>

<sup>43</sup> Colorado Natural Gas Comments, 6/13/2022 at 11; Case Tiering Workshop Notes, 10/26/2023 at 10.

<sup>44</sup> Case Tiering Workshop Notes, 10/26/2023 at 10.

<sup>45</sup> Impacts and Benefits Workshop Notes, 1/4/2024 at 25.

<sup>46</sup> CEO Comments, 6/13/2022 at 19; EJ Coalition Comments, 6/13/2022 at 26, 50.

<sup>47</sup> Washington Administrative Code, 480-100-605, available at <https://apps.leg.wa.gov/wac/default.aspx?cite=480-100-605>.





	<p>evidence.<sup>48</sup> So that the Commission can have the record before it to reach these equity considerations, the Commission may need to include requirements for regulated entities to address equity in the course of proceedings, including outreach they have conducted, how actions or programs support equity, and how they have addressed public comments.</p>
<p><b>Adopt new category of cases, “equity impact proceedings,” based on actual or potential impact of the case on disproportionately impacted communities; establish more robust requirements for community outreach and analysis for these cases.</b></p>	<p>While the issues of equity and disproportionately impacted communities are relevant in all cases before the Commission, not all cases will require complex or robust analyses and processes to inform the Commission’s decision-making. Some cases may be narrow in scope, relate to purely administrative actions, or be filed in compliance with a previous Commission decision. Other cases, however, may require more complex factual analysis of the utility’s proposed capital expenditures or retail customer programs from an equity lens.</p> <p>At an October 2023 workshop, staff proposed a three-tier system for classifying cases, but upon further review, we now recommend creating two categories of adjudications: “equity impact proceedings” and all other proceedings. By rule, the Commission could create a category of equity impact proceedings that require certain procedural and substantive steps. At minimum, these requirements could include pre-filing outreach, heightened notice requirements, identification of potentially affected disproportionately impacted communities, an analysis of impacts and benefits which could draw in part from the utilities’ approved energy equity plan, and addressing whether a public comment hearing should be held. Other proceedings could include additional procedures on a case-by-case basis but would not, by default, require additional filings or process.</p> <p>The following types of proceedings could be classified as “equity impact proceedings” by rule:</p> <ul style="list-style-type: none"> <li>● Electric resource plans</li> <li>● Electric distribution system plans and gas infrastructure plans</li> <li>● Applications addressing retail customer programs and/or programs for income-qualified utility customers</li> <li>● Phase I and II general rate cases</li> <li>● Applications for certificates of public convenience and necessity filed pursuant to § 40-5-101, C.R.S., and that include electric or gas infrastructure that is located in or proximate to disproportionately impacted communities</li> <li>● Applications which could result in a health or safety impact on disproportionately impacted communities</li> </ul>

<sup>48</sup> See, e.g., Rule 3613(h), 4 CCR 723-3.



	<ul style="list-style-type: none"> <li>Any other proceeding as determined by the Commission or where disproportionately impacted communities are addressed by statute</li> </ul> <p>This approach would exclude routine cases like utility franchise agreements with local governments; utility advice letters filed in compliance with a prior adjudicated case; and repository proceedings for annual and other types of recurring reports. Rulemakings would also be addressed separately.</p> <p>Given that pre-filing outreach by the utility could be significant for equity impact proceedings, having a relatively clear list of baseline proceedings to consider would be helpful for all parties so that they are on notice of when these heightened requirements may apply. However, there should be some degree of flexibility in whether a proceeding should be considered an equity impact proceeding. First, it may make sense to refine the list of upcoming proceedings that may qualify through individual utilities’ energy equity plan applications. Second, it may make sense to require categorization be addressed with an application filing so that it can be contested as part of intervention filings, thus positioning the Commission to affirm or change the categorization early in the process. These practical concepts can be further defined in a future rulemaking.</p>
<p><b>Assign to utilities a leadership role and responsibility to implement relevant aspects of SB 21-272.</b></p>	<p>Many comments indicated that electric and gas utilities are better positioned to implement certain aspects of SB 21-272 than the Commission or other entities. Staff agrees that utilities should be expected to lead in implementation of certain aspects of SB 21-272. First, utilities have the tools to garner in-depth knowledge of their service territory and customer base because of local staff and customer account representatives, making them better suited to engage representatives of disproportionately impacted communities about their energy priorities than an entity working outside of the service territory. Second, the decisions that utilities make around their capital investment strategy, rate design, and program offerings directly impact the affordability, health, and comfort of this system for their customers, giving them a major role in considering how to create an equitable energy system. Additionally, while the Commission has increasingly encouraged or required pre-filing engagement,<sup>49</sup> the utility remains the only entity that fully knows what it intends to file and how it will impact its customers. The Commission’s rules should thus set expectations for utility outreach and analysis and require appropriate information to be provided to the Commission.</p> <p>At the same time, Staff is cautious about placing sole responsibility for activities like stakeholder engagement on utilities, which are themselves seeking specific decisions by the Commission. As a result, the Commission should also modify other procedural rules, and the Director expand public</p>

<sup>49</sup> Rule 3529(a)(XVI), 4 CCR 723-3.



	<p>participation and improve the agency’s outreach practices, alongside any new rules setting specific expectations for electric and gas utilities.</p>
<p><b>Increased interagency engagement can reduce duplicative policy and outreach efforts.</b></p>	<p>The Commission has always operated in an ecosystem of other state agencies with their own jurisdiction, nuanced regulatory proceedings, and activities requiring outreach and participation. However, complex, interdisciplinary issues like environmental justice and the equitable transition to a clean energy future require new levels of coordination in these interactions.</p> <p>From a technical perspective, Staff believes it will be increasingly critical to collaborate with other state agencies that have expertise or regulatory authority in topics like health, state policy goals, and environmental impacts.<sup>50</sup> For example, while the Commission may be asked to consider a utility’s proposed portfolio of electric resources that includes fossil fuels, the air quality permits for those generating units are addressed by the Air Pollution Control Division (“APCD”) at CDPHE. Additionally, the Commission may be tasked with approving a utility’s budget for customer incentives for end-use technologies, and should be aware of any incentives offered by CEO through state or federal funding to ensure state, federal, and utility incentives can be stacked to maximize benefits to customers.</p> <p>Ideally, the Commission should build on existing interagency processes rather than establish new requirements that are confusing, duplicative, or conflicting. One example of early coordination is in the Colorado Energy and Carbon Management Commission’s Cumulative Impacts Rulemaking. Because the rulemaking involves areas where the Commission regulates activities in close coordination with CDPHE, commission staff met with staff from the APCD. Staff from APCD provided valuable input that helped shape the Colorado Energy and Carbon Management Commission’s rules to avoid inconsistencies and duplication.<sup>51</sup></p> <p>Such interagency engagement will require thoughtful work by Commission staff to build relationships with other state agencies and to better understand their processes and jurisdictions and how they intersect with Commission proceedings. In both rulemakings and adjudications, the Commission may wish to solicit more specific comments on the activities and processes of other state agencies, and invite their direct participation in proceedings as appropriate, including through less formal venues like workshops. Moreover, the Commission may want to ensure there are staff who can work more flexibly outside</p>

<sup>50</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 25.

<sup>51</sup> Colorado Energy and Carbon Management Commission Proceeding No. 240600145, *ECMC - Exhibit: Appendix B (Draft Basis & Purpose) To Notice*, June 14, 2024, at <https://oitco.hylandcloud.com/DNRCOGPublicAccess/index.html>.



	<p>traditional decision-making processes to collaborate with other agencies when so required.</p> <p>From a communications perspective, other state entities such as CEO and UCA likely have a role in engaging with disproportionately impacted communities to ensure that their interventions and testimony represent – at least in some part – the needs of these communities. Both of these organizations’ missions implicate a duty to consider equity-related issues in their work.<sup>52</sup></p> <p>To aid this engagement and ensure that it is not extractive, duplicative, or overly burdensome, staff suggests that the Director and Commission advisory staff share the Commission’s general communications plan with members of CEO and UCA at least annually and explore upcoming industry issues for which disproportionately impacted communities and income-qualified customers will need additional engagement. Such communications would help the Commission understand where there may be gaps in perspectives or representation. This would also build on existing efforts to coordinate communications across multiple state agencies.</p>
<p><b>Agency management should continue socializing and institutionalizing the Agency Equity Framework and its discussion of equity dimensions, thus guiding agency practices outside of rule changes.</b></p>	<p>Staff supports the agency’s efforts to move forward with its learnings around equity through the implementation of relevant State of Colorado policies<sup>53</sup> and the Agency Equity Framework. The Framework contains a description of each agency team and identifies team-specific equity priorities. It provides a set of guiding principles across four dimensions of equity that serve as aspirational goals for agency staff. The Framework also provides an initial assessment for actions the agency can take to implement SB 21-272, separate from the creation of rules. Some of these areas of work are specific to a particular team, and others may affect multiple teams or the entire agency.</p> <p>The Director should continue to work with teams to prioritize their actions and support the Commission’s ability to articulate how equity is considered in its decisions. The Director and agency management also have the ability to create new, and amend existing, generally applicable policies to aid in the implementation of the requirements set by the Colorado General Assembly and Commission rules. Policies on public participation and engagement, data collection, staffing, and</p>

<sup>52</sup> § 40-6.5-104(2) (in considering whether to appear in a proceeding, the Director of the UCA shall consider the public interest, including environmental justice); § 24-38.5-101(1) (the mission of the CEO includes promoting an equitable transition toward zero emission buildings and transportation electrification).

<sup>53</sup> The State of Colorado’s Universal Policy on Equity, Diversity, and Inclusion states that equity is “[w]hen everyone, regardless of who they are or where they came from, has the opportunity to thrive. Equity recognizes that some individuals have an advantage because of their identity, while others face barriers. Unlike equality, which suggests giving the same thing to everyone, equity works to provide opportunities to those facing barriers by providing additional resources to those who do not have these advantages.” See <https://drive.google.com/file/d/1VI0xTkfJ2CmVjZrZhik6EpKYyD4vtETM/view> at p. 2.



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communications can ensure that the agency is operationally aligned with the evolving equity goals in statute and rules. The Director can update these and other policies, using tools like community engagement and focus groups, to inform these efforts.

## **Improve Procedural Equity**

This section focuses on broadly improving how the public can understand and engage with the Commission. The topic of procedural equity received, by far, the most robust comments of any dimension of equity, and certain recommendations—such as a desire that the Commission provide plain language materials to be more transparent about how its decisions impact the public—were raised by stakeholders at almost every workshop and in many written comments.

Stakeholders raised several significant barriers to engagement with disproportionately impacted communities:

- Many people work multiple jobs, or jobs where they cannot take time out of the day, and thus are unable to participate in time-consuming activities like workshops and public comment hearings.<sup>54</sup> Entities with critical experience, such as energy assistance providers, may also not have capacity to send representatives to these activities.<sup>55</sup>
- It is difficult to understand how to participate in Commission proceedings. It can be difficult to know what proceedings are ongoing and when activities for public participation, like public comment hearings, will occur.<sup>56</sup>
- Issues that are priorities to disproportionately impacted communities can span multiple proceedings in a way that is difficult to follow, let alone understand what components are being decided in which case. As a result, outreach may need to be more general, ongoing, and focused on conveying certain messages at certain times to certain groups to address specific needs.<sup>57</sup> Stakeholders also raised that the Commission is behind in implementing legislation, particularly rulemakings, and it can be discouraging when people have no insight into when issues they care about will be addressed.<sup>58</sup>
- Participating in Commission proceedings can be resource-intensive, expensive, and time-consuming.<sup>59</sup> Further, expecting disproportionately impacted communities to always come to the table to ensure that their needs are identified and heard can be extractive and infeasible.

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<sup>54</sup> Equity Framework Workshops Notes, 9/20/2023 at 22, 32.


<sup>55</sup> See, e.g., EOC Comments, 6/13/2022 at 15.

<sup>56</sup> Equity Advisory Focus Group observation, see notes at [puc.colorado.gov/equity](https://puc.colorado.gov/equity).

<sup>57</sup> Case Tiering Workshop Notes, 10/26/2023 at 40-41.

<sup>58</sup> Equity Framework Workshops Notes, 9/20/2023 at 33.

<sup>59</sup> Public Comment, 10/18/2022 at 5.



- Because the Commission has historically focused on public comment hearings in litigated cases, which are often held well into a proceeding’s schedule, *i.e.*, after at least some testimony has already been filed, public input often comes too late in the process to have an impact on the outcome.<sup>60</sup>

These barriers inform the stakeholder recommendations that follow. Ultimately, stakeholders asserted that failing to mitigate these barriers will have negative consequences. This includes consequences to the Commission—such as eroding its credibility as an agency working in the public interest<sup>61</sup>—and to disproportionately impacted communities—such as failing to develop policy solutions that meet the needs of the most vulnerable.<sup>62</sup> Stakeholders particularly raised that utility customers can have very different experiences, and they are concerned about that diversity and those unique experiences being overlooked.<sup>63</sup> However, some stakeholders also recognized that the Commission may be limited by state law in what actions it can take, even with more effective engagement.<sup>64</sup>

### Stakeholder Perspectives and Recommendations

**Public participation and community outreach are different tools, and the Commission should consider how it is able to improve these areas itself or direct its regulated entities to do so.**

At the January 31, 2024, workshop on public participation, staff from the Hawaii Public Utilities Commission presented research that contemplates the role of commissions in public engagement and defines two types of engagement: public participation and community engagement.<sup>65</sup> Public participation refers to interactions between the public and a commission, ranging from formal participation in a docketed proceeding to informal participation in workshops, public comments, or other types of meetings. Community engagement refers to outreach on a particular issue. Generally, the report suggests that commissions are better suited to lead public participation activities, whereas utilities and Community-Based Organizations (“CBOs”) are better suited to lead community engagement activities where the commission’s role might be limited to facilitating interactions and issuing guidance on topics or objectives.

<sup>60</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 6.

<sup>61</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 6 (the Commission risks getting the same responses from the same people, and not knowing enough about peoples’ needs to work in the public interest).

<sup>62</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 6.

<sup>63</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 6.

<sup>64</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 40.

<sup>65</sup> Eric Sippert, Public Engagement and the Public Utilities Commission: Paths to 100% Renewable Energy in Hawaii, Final Report and Recommendations (October 2023), filed July 9, 2024.

Most stakeholders conclude that there are numerous ways the Commission can improve its practices for public participation. Stakeholders recommended numerous tools, including adopting certain principles for public participation like the International Association for Public Participation’s Spectrum of Public Participation, the Federal Energy Regulatory Commission’s Equity Action Plan, the Colorado Climate Equity Advisory Committee in Climate Equity Framework, CDPHE’s Climate Equity Framework, CEO principles of community engagement, or the Jemez Principles.<sup>66</sup>

Public participation refers to interactions between the public and a commission, ranging from formal participation in a docketed proceeding to informal participation in workshops, public comments, or other types of meetings. Community engagement refers to outreach on a particular issue.

However, stakeholders’ opinions on whether the Commission should engage in community outreach has ranged widely throughout this proceeding. Some stakeholders believe that the Commission should itself conduct direct outreach to communities on equity issues, while others believe that the Commission’s role should be to direct regulated entities to work with community organizations or other proceeding intervenors to conduct culturally appropriate outreach.

Stakeholders suggested the Commission initially focus on improving its broad communications and education resources and grow into more robust community engagement as it learns. The workshop resulted in the following list of potential priorities for Commission adoption:<sup>67</sup>

- Improve the Commission website, which stakeholders say is currently confusing to navigate and to understand
- Develop neutral, educational content for different audiences on topics such as how the electric grid works and what actions contribute to utility bills
- Hold community meetings that provide opportunities for listening and dialogue
- Draft all public-facing documents using plain language, at the 8th-10th grade level
- Create a feedback loop so that people feel like they are being heard; suggestions include quarterly meetings, checking in with communities after major proceedings, and having the Commission discuss in its oral deliberations and written order how public comments were considered
- Seek input early enough to inform decisions while all options remain on the table

**Disproportionately impacted communities and communities of color are not a monolith in their needs, experiences, and opinions.<sup>68</sup>**

Stakeholders grounded conversations about public participation and community engagement in the fact that energy and the other essential services that the Commission regulates affect people’s lives. Decisions

<sup>66</sup> EJC Comments, 6/13/2022 at 8, 26-28; City of Boulder Comments 6/13/2022 at 8; CEO Comments 6/13/2022 at 9; RMI/WRA Comments 6/13/2022 at 15.

<sup>67</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 75.

<sup>68</sup> EJ Coalition Comments, 6/13/2022 at 9.

should not be made without talking to those who are most impacted.<sup>69</sup> Stakeholders also cautioned that utilities and the Commission should be conscientious about how settlement agreements negotiated among the formal parties to a proceeding may limit inclusion of marginalized voices and reduce equity consideration. Stakeholders recommend the Commission ensure settling parties directly engage with community members rather than only advocacy organizations.<sup>70</sup> Further, stakeholders stated that it is meaningful for communities to directly engage with the decision-making Commissioners.<sup>71</sup> Stakeholders also raised the issue that treating all disproportionately impacted communities the same and providing the same participation and engagement opportunities may not result in improved equity outcomes. Rather, stakeholders shared that the Commission should identify voices and perspectives that are missing, and take proactive steps to bring in those voices. Stakeholders shared that Asian American and Pacific Islander and LGBTQ+ voices are not consistently represented.<sup>72</sup>

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**Lived experience is a critical and missing piece of Commission processes.**

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A consistent theme from stakeholders was the need to consider lived experience in Commission activities. For example, when the Commission makes decisions about customer programs, it should ensure that utilities consult diverse stakeholders within their service territory and work to reduce barriers that income-qualified customers, customers in disproportionately impacted communities, and other vulnerable customers could face in accessing those programs. Similarly, the Commission should conduct more thoughtful outreach to understand the experiences of utility customers when making rules on issues that impact those customers, like disconnections or program design. Finally, stakeholders suggested that if the Commission hires an outreach and engagement coordinator, that the position should require lived experience in one or more marginalized communities, to enable them to be a trusted messenger.<sup>73</sup> At the same time, as the Commission seeks to bring in more lived experience, it will also need to ensure staff are trained to be culturally sensitive as well as to incorporate trauma sensitivity in their work, given that disproportionately impacted communities are experiencing ongoing disparities in environmental and public health.<sup>74</sup>

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**The Commission has many options to improve its communications about opportunities to participate.**

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Stakeholders offered several recommendations for how the Commission can improve its communications about different opportunities for public participation. First, stakeholders suggested the Commission publish proceeding schedules and objectives when possible, stating that it would be helpful to have more accessible and easier to understand information about milestones in proceedings and when people can participate. Stakeholders raised concern that the Commission does not consistently publish schedules for

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<sup>69</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 6.

<sup>70</sup> Public Comment, 10/18/2022 at 7.

<sup>71</sup> Equity Framework Workshops Notes, 9/20/2023 at 36.

<sup>72</sup> EJ Coalition Comments, 6/13/2022 at 8-9.

<sup>73</sup> RMI/WRA Comments, 6/13/2022 at 11.

<sup>74</sup> Informational Meetings Notes, 7/5/2022 at 2; EJ Coalition Comments, 2/23/2023 at 14; Equity Framework Workshops Notes, 9/20/2023 at 42; Case Tiering Workshop Notes, 10/26/2023 at 40.



proceedings with timelines, proceeding names, and descriptions of key issues to be decided. Stakeholders suggested that a centralized resource with this basic information would make it easier for a member of the public to follow cases of interest. Stakeholders pointed out that members of the public do not naturally remember docket numbers, which the Commission uses to identify proceedings.<sup>75</sup> Further, when the Commission provides information about proceedings, it should identify how the proceedings could impact people's lives, so they can make judgments about whether they want to participate.<sup>76</sup>

Stakeholders also cautioned that more of the same public participation the Commission currently does is not necessarily better, sharing that more outreach and engagement is not necessarily the same as more meaningful outreach and engagement.<sup>77</sup> While the Commission should strive to solicit more public comments, the volume of public comments is not the only measure of success. Stakeholders stated that ideally, the Commission should test which actions are effective before it makes rules.<sup>78</sup> In this vein, the Commission should more robustly track and report on its progress to improve engagement, including by tracking participation in hearings and comments, and conducting surveys, interviews, and focus groups.<sup>79</sup>

### **The Commission has a significant role in providing neutral education.**

Stakeholders recommended that the Commission communicate generally about how its work impacts people's lives and specifically about individual proceedings. Stakeholders indicated that currently, people do not have useful information about how to participate at the Commission—all methods to learn about the Commission require a certain level of preexisting knowledge about the Commission.<sup>80</sup> Industry regulation is complicated and confusing, and often requires a high level of understanding to engage. To lessen this burden, the Commission should offer a range of resources that can meet people where they are so that they have the best chance of participating.

Stakeholders identified several areas where the Commission could provide education that would lead to more meaningful and effective participation. First, stakeholders suggested the Commission provide more resources explaining the Commission's purpose and its practices, including providing more resources outlining what the various entities regulated by the Commission do.<sup>81</sup> Stakeholders suggested providing industry-specific fact sheets and information about priority regulatory topics, such as how customer utility bills are set or customers' rights related to vehicle towing on the agency website. Second, stakeholders said that there should be more information or public trainings available explaining how the decision-making process works at the Commission and what opportunities people have to engage in that process.<sup>82</sup>

<sup>75</sup> Equity Framework Workshops Notes, 9/20/2023 at 31; Work Planning Workshops, 10/18/2022 at 3; Case Tiering Workshop Notes, 10/26/2023 at 40-41, 55.

<sup>76</sup> Equity Framework Workshops Notes, 9/20/2023 at 31.

<sup>77</sup> Case Tiering Workshop Notes, 10/26/2023 at 41.

<sup>78</sup> CEO Comments, 6/13/2022 at 17.

<sup>79</sup> CEO Comments, 6/13/2022 at 17; EJ Coalition Comments, 6/13/2022 at 48; Equity Framework Workshops Notes, 9/20/2023 at 36; CEO Comments, 7/27/2022 at 13-14.

<sup>80</sup> Equity Framework Workshops Notes, 9/20/2023 at 31; Informational Meetings Notes, 7/5/2022 at 2.

<sup>81</sup> Equity Framework Workshops Notes, 9/20/2023 at 31; Work Planning Workshops Notes, 10/18/2022 at 4, 6; EJ Coalition Comments, 6/13/2022 at 22.

<sup>82</sup> CEO Comments, 6/13/2022 at 15.

Third, stakeholders recommended that the Commission create plain-language explainers for significant proceedings, like major cases and rulemakings, that highlight the potential the anticipated outcomes, and include any final decisions, once issued.<sup>83</sup> Fourth, The Commission could hold a quarterly check-in with staff, utilities, and members of the public, and share which public comment opportunities are open or coming up, as well as providing education.<sup>84</sup> Overall, the guidance was to make the actions of regulated entities and the Commission more understandable and more tied to how they affect people’s everyday lives.

Stakeholders suggested that the Commission may benefit from creating a “non-decisional” staff designation, which is used by the Federal Energy Regulatory Commission Office of Public Participation, so that communications team members can freely talk to members of the public and provide education and information. This could reduce confusion for members of the public about who they can and cannot speak with.<sup>85</sup>

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### **The Commission should use different communications channels to reach more people.**

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Stakeholders raised the consideration that different people consume information through different channels and recommended that the Commission communicate across multiple channels when it conducts outreach or shares educational materials. Stakeholders also recommended the Commission track how well different channels are engaging priority demographics by soliciting feedback or tracking various online engagement indicators.<sup>86</sup> Some participating community members shared that individuals in their communities do not use email as their primary form of communication.<sup>87</sup> Social media sites—including Facebook, Tiktok, and Twitter (X)—may be used to receive news and information at higher rates by adults who identify as Black or Hispanic, compared to White adults.<sup>88</sup>

Other communications channels that stakeholders specifically recommended include:

- Sharing a weekly email or media post with public participation opportunities<sup>89</sup>
- Reaching out to people through non-web communications like local TV news, local newspapers, local radio, or text messages<sup>90</sup>
- Establishing internal personnel or dedicated teams to directly communicate with the public and track communication effectiveness<sup>91</sup>

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<sup>83</sup> RMI/WRA Comments, 6/13/2022 at 11; EJ Coalition, 6/13/2022 at 21.

<sup>84</sup> Colorado Natural Gas Comments, 6/13/2022 at 4.

<sup>85</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 27.

<sup>86</sup> EJ Coalition Comments, 6/13/2022 at 22; Case Tiering Workshop Notes, 10/26/2023 at 55.

<sup>87</sup> Work Planning Workshops Notes, 11/3/2022 at 9.

<sup>88</sup> EJ Coalition Comments, 6/13/2022 at 23; EOC Comments at 6/13/2022 at 16.

<sup>89</sup> Case Tiering Workshop Notes, 10/26/2023 at 56.

<sup>90</sup> EJ Coalition Comments, 6/13/2022 at 22; Case Tiering Workshop Notes, 10/26/2023 at 55.

<sup>91</sup> EJ Coalition Comments, 6/13/2022 at 6, 22, 29-34; Case Tiering Workshop Notes, 10/26/2023 at 55.



- Hiring roles like an ombudsperson, an outreach and communications coordinator with lived experience, an equity advocate, an office of public participation, or a staff point of contact for each industry for the public to reach out to and ask specific questions<sup>92</sup>

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**The Commission should partner more with community-based organizations.**

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Stakeholders recommend that the Commission partner more with CBOs and require that utilities do so when conducting community outreach.<sup>93</sup> They characterize CBOs as the subject matter experts of their own neighborhoods, and explain that engaging CBOs is crucial for building trust and providing culturally sensitive information to communities.<sup>94</sup> According to stakeholders, CBOs can play a variety of roles: subject matter experts, co-creators of content, facilitators or hosts for engagement opportunities, supporters for enrollment in energy affordability programs, and advisors on performance metrics, engagement strategies, and best practices.<sup>95</sup>

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**The Commission should make its E-Filings System for electronic records more usable.**

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Multiple stakeholders indicated that they find the E-Filings System for case records confusing and difficult to use. Specifically, stakeholders raised that the search function is difficult to use when terminology is not standardized;<sup>96</sup> coding for documents is unclear what they refer to;<sup>97</sup> and the process of registering for an account is convoluted and legalistic.<sup>98</sup> One stakeholder stated that they asked colleagues to try signing up, but that their colleagues became too confused to complete the process, even with the training videos that are currently offered by the agency.<sup>99</sup>

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**The Commission should increase language accessibility, particularly for plain language but also for speakers of languages other than English.**

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Stakeholders stated that information cannot just be available, it must be formatted in a way that is easy to understand. Commission proceedings are highly technical, and it can be difficult to determine what impacts could result from a particular activity.<sup>100</sup>

Stakeholders identified two forms of language accessibility: the use of plain language to break down technical concepts, and providing information in languages other than English, such as Spanish, American Sign Language,<sup>101</sup> and other languages.

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<sup>92</sup> EJ Coalition Comments, 6/13/2022 at 6, 22, 29-34; Case Tiering Workshop Notes, 10/26/2023 at 55.

<sup>93</sup> Colorado Natural Gas Comments, 6/13/2022 at 7.

<sup>94</sup> City and County of Denver Comments, 6/13/2022 at 8; EJ Coalition Comments, 6/13/2022 at 28; Work Planning Workshops Notes, 11/3/2022 at 9; EOC Comments, 6/13/2022 at 17.

<sup>95</sup> City and County of Denver Comments, 6/13/2022 at 8; CEO Comments, 7/27/2022 at 8.

<sup>96</sup> City of Boulder Comments, 6/13/2022 at 15-16.

<sup>97</sup> Work Planning Workshops Notes, 10/18/2022 at 4.

<sup>98</sup> EJ Coalition Comments, 6/13/2022 at 22-23.

<sup>99</sup> Informational Meetings Notes, 7/5/2022 at 1.

<sup>100</sup> Case Tiering Workshop Notes, 10/26/2023 at 41.

<sup>101</sup> RMI/WRA Comments, 6/13/2022 at 10.



With regard to plain language, stakeholders raise that Commission proceedings often use complex language, and specific terms of art—either technical or legal—as well as acronyms, that are inaccessible to many people.<sup>102</sup> This can make people can feel excluded and like their experiences are hard to elevate in the decision-making process.<sup>103</sup> Stakeholders suggest that the Commission can move forward with improvements regardless of rules. Immediate steps that can be taken include avoiding acronyms, creating clear names for proceedings rather than using docket numbers; incorporating more visual components, and adding more descriptions of what the purpose of a proceeding is in places like the website and meeting agendas.<sup>104</sup> Stakeholders suggested that simplifying and explaining Commission procedures in plain language could be particularly important.<sup>105</sup> However, they also recommend that the Commission adopt more specific plain-language requirements or provide training to Staff to ensure that information that is provided to the public is written at no higher than an eighth grade level.<sup>106</sup>

Stakeholders also had several recommendations on improving language accessibility for languages other than English. They suggested the Commission should provide materials and language services for at least the top three monolingual languages in Colorado, which are Spanish, Mandarin/Cantonese, and German, but potentially also Vietnamese and Korean.<sup>107</sup>

Alternatively, drawing on the Commission’s existing Rules 3407(f) and 4407(f), the Commission could require that communications from utilities and the Commission include languages that are commonly spoken within a utility’s service territory by at least a certain share of the population.<sup>108</sup> CEO suggested the Commission propose a threshold amount for what constitutes a commonly spoken language and invite comment and analysis of that threshold to determine if the method is achieving results or if more resources are necessary.<sup>109</sup> Using these known demographics to proactively include common languages in the territory may result in faster action for the agency than waiting for individuals to fill out online request forms.<sup>110</sup> Utilities could also be required to identify languages that are relevant to each filing, and to translate notices for applications and petitions into languages that may be relevant to disproportionately impacted communities.<sup>111</sup> While recognizing the Commission’s progress to offer more interpretation and translation, stakeholders still consider the translations cumbersome, particularly because more progress needs to be made on communicating in plain language.<sup>112</sup>

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<sup>102</sup> EJ Coalition Comments, 6/13/2022 at 20-21; Work Planning Workshops Notes, 10/18/2022 at 4.

<sup>103</sup> Case Tiering Workshop Notes, 10/26/2023 at 40.

<sup>104</sup> Case Tiering Workshop Notes, 10/26/2023 at 39; Public Comment, 10/18/2022 at 8.

<sup>105</sup> Colorado Natural Gas Comments, 6/13/2022 at 8.

<sup>106</sup> EJ Coalition Comments, 6/13/2022 at 20-21; Work Planning Workshop Notes, 11/3/2022 at 9.

<sup>107</sup> EJ Coalition Comments, 6/13/2022 at 21-22; Informational Meetings Notes, 7/5/2022 at 1.

<sup>108</sup> Colorado Natural Gas Comments, 6/13/2022 at 5-6; CEO Comments, 6/13/2022 at 12, 15.

<sup>109</sup> CEO Comments, 7/27/2022 at 6.

<sup>110</sup> RMI/WRA Comments, 6/13/2022 at 10.

<sup>111</sup> CEO Comments, 6/13/2022 at 12, 15.

<sup>112</sup> Informational Meetings Notes, 7/5/2022 at 1.

**The Commission should establish baseline notice and accessibility practices for meetings, workshops, public comment hearings, and other public-facing activities.**

Many stakeholders provided similar recommendations about how the Commission could improve the types of public-facing activities it hosts. In addition to recommendations regarding language accessibility, which were previously discussed, stakeholders recommended implementing the following standard practices for these types of Commission-hosted events:

Stakeholders emphasized the importance of a diversity of opportunities to engage with the public.

- Provide the public with advance notice of events, ideally at least 30 days prior to the event<sup>113</sup>
- Provide food when meetings are held during mealtimes<sup>114</sup>
- Offer childcare services, particularly where meetings are held outside of typical 9am-5pm working hours, so that families can participate<sup>115</sup>
- Select appropriate locations for meetings. Meeting sites should be in or accessible to disproportionately impacted communities, with parking and public transit options; in community gathering places that are familiar, safe, and inclusive, not just in government facilities; and in locations that are accessible to individuals with disabilities<sup>116</sup>
- Meetings should be scheduled at times and on days of the week that allow varied participation, even for individuals with irregular or nontraditional work schedules<sup>117</sup>
- Provide technology training and technology alternatives for individuals who are less proficient in technology or who do not have access to the internet<sup>118</sup>

Stakeholders also emphasized the importance of a diversity of opportunities to engage with the public. They pointed out that while making community meetings available virtually increases access to a larger number of populations, more venues, like grocery stores, libraries, community centers, senior centers, rec centers, and legal aid offices can enable the Commission to meet people where they are at.<sup>119</sup>

Many of these recommendations were similar to, or based on, the recommendations in the Task Force Report.<sup>120</sup> [Appendix B](#) discusses lessons learned from those recommendations staff tested in this proceeding.

<sup>113</sup> CEO Comments, 6/13/2022 at 11-13; Work Planning Workshop Notes, 10/18/2022 at 4.

<sup>114</sup> CEO Comments, 6/13/2022 at 11-13; RMI/WRA Comments, 6/13/2022 at 11-12.

<sup>115</sup> CEO Comments, 6/13/2022 at 11-13; RMI/WRA Comments, 6/13/2022 at 11-12.

<sup>116</sup> CEO Comments, 6/13/2022 at 11-13; Colorado Natural Gas Comments, 6/13/2022 at 6; RMI/WRA Comments, 6/13/2022 at 11-12.

<sup>117</sup> CEO Comments, 6/13/2022 at 11-13; RMI/WRA Comments, 6/13/2022 at 11-12.

<sup>118</sup> CEO Comments, 6/13/2022 at 11-13; RMI/WRA Comments, 6/13/2022 at 12.

<sup>119</sup> Case Tiering Workshop Notes, 10/26/2023 at 40; EOC Comments, 6/13/2022 at 16-17; City and County of Denver Comments, 6/13/2022 at 9, Energy Equity Advisory Group Conversation.

<sup>120</sup> Task Force Report at PDF p. 40-48.

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**The Commission should improve the process of soliciting and considering public comments and make clear how it considers those comments in its decision-making.**

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Stakeholders identified that it is often challenging to know the timing, scope, and desired topics for public comments and public comment hearings with enough advanced notice to meaningfully contribute to the public participation opportunity. Stakeholders raised concern that the Commission does not currently formally acknowledge if written comments are received, which can leave people confused whether they successfully submitted their comment, and they may submit comments multiple times.<sup>121</sup>

Stakeholders emphasized that the Commission should explain how written and oral comments from the public are used to inform its decisions.<sup>122</sup> Elevating public comments and summarizing key themes as part of the decision-making process—and addressing what aspects were agreed or disagreed with—can help people feel like their comments matter.<sup>123</sup> It would be helpful to make public comment hearing transcripts available, and ideally translated into multiple languages, more quickly.<sup>124</sup>

Stakeholders also raised the challenge that public comments are not currently treated as evidence. Some stakeholders suggested the Commission affirmatively change Rule 1509(a) to allow public comments to be considered as evidence.<sup>125</sup> Other stakeholders suggested that commenters could be given the opportunity to be sworn in at public comment hearings, to allow their comments to be treated more like sworn witness testimony, which is considered evidence.<sup>126</sup>

Stakeholders proposed that the Commission institute a more formal process in deliberations to ensure public comments are addressed, and suggested the Commission’s advisory staff could summarize key comments when presenting issues for decision to better facilitate Commissioner discussion of the issues raised in public comment.<sup>127</sup> Stakeholders further suggested the Commission’s decision-making process, and resulting written decision, should expressly address the following equity issues: what are the impacts and benefits to disproportionately impacted communities in the proceeding, how disproportionately impacted communities were engaged with and how their input informed the ultimate decision, and how equity was considered overall.<sup>128</sup>

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**The Commission should consider revisions to its notice rules to require more effective notice of upcoming proceedings to members of disproportionately impacted communities**

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Stakeholders raised questions about the current requirements for the Commission and utilities to notify potentially interested members of the public about new filings, and whether they are sufficient to reach disproportionately impacted communities. CEO suggested that the Commission develop and maintain

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<sup>121</sup> Case Tiering Workshop Notes, 10/26/2023 at 56; CEO Comments, 6/13/2022 at 13-16.

<sup>122</sup> Case Tiering Workshop Notes, 10/26/2023 at 56.

<sup>123</sup> Equity Framework Workshops Notes, 9/20/2023 at 32; Work Planning Workshops Notes, 10/18/2022 at 4.

<sup>124</sup> Work Planning Workshops Notes, 10/18/2022 at 4.

<sup>125</sup> RMI/WRA Comments, 6/13/2022 at 12.

<sup>126</sup> Work Planning Workshops Notes, 10/18/2022 at 3.

<sup>127</sup> Work Planning Workshops Notes, 10/18/2022 at 3.

<sup>128</sup> CEO Comments, 6/13/2022 at 13-16; CEO Comments, 7/27/2022 at 10; Case Tiering Workshop Notes, 10/26/2023 at 56.

email and other contact information for relevant community-based organizations and directly notify these contacts of new filings rather than solely relying on the default notices sent through the Commission's E-Filings System. CEO also pointed out that the current case descriptions used in notices may be overly technical and therefore hard to understand.<sup>129</sup> Colorado Natural Gas raised that the Commission previously evaluated notice requirements through Proceeding No. 21R-0327ALL, and suggests that the manner of communication specified in notice rules may simply be insufficient to receive customer attention.<sup>130</sup>

Stakeholders also suggested that there may need to be follow-on notice provided once a case is completed, and a final decision is issued. CEO raised that the Commission does not currently have a way of notifying disproportionately impacted communities of its decisions, and follow-through is critical to relationship- and trust-building.<sup>131</sup>

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**Stakeholders recommend adjustments to the process by which stakeholders intervene in proceedings and become formal parties.**

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Stakeholders raised two specific issues where the Commission could make its intervention process more equitable. First, in motions for intervention, prospective intervenors should be required to address the extent to which their intervention seeks to prioritize equity and whether they are serving as an advocate for any disproportionately impacted communities.<sup>132</sup> Second, the Commission should interpret intervention requirements more universally and permissively. Specifically, stakeholders believe the Commission should be clearer that an attorney is not required to intervene in proceedings and explain how individuals can intervene *pro se*.<sup>133</sup> Additionally, UCA states that its participation should not be a barrier to the participation of intervenors with distinct interests in a proceeding, particularly where a prospective party would be representing income-qualified customers and disproportionately impacted communities.<sup>134</sup>

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**The Commission should evaluate and potentially reform the intervenor compensation structure as part of exploring ways to promote more direct participation by disproportionately impacted communities.**

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Stakeholders state that financial resources should not constrain a party's ability to intervene in a case.<sup>135</sup> Stakeholders raise concern that lack of access to attorneys and expert witnesses can prevent disproportionately impacted communities from participating in litigated proceedings on par with other parties, and that agency or other support for attorney fees and consultant modeling would be useful.<sup>136</sup> On this point, we note that current law, § 40-6.5-105, C.R.S., does set requirements that parties must

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<sup>129</sup> CEO Comments, 6/13/2022 at 12, 15.

<sup>130</sup> Colorado Natural Gas Comments, 6/13/2022 at 6.

<sup>131</sup> CEO Comments, 6/13/2022 at 13-14; Work Planning Workshops, 10/18/2022 at 4.

<sup>132</sup> CEO Comments, 6/13/2022 at 16.

<sup>133</sup> Equity Framework Workshops Notes, 9/20/2023 at 3; Work Planning Workshop Notes, 10/18/2022 at 3.

<sup>134</sup> UCA Comments, 6/28/2022 at 13.

<sup>135</sup> City of Boulder Comments, 6/13/2022 at 6, 9-10; Work Planning Workshops Notes, 10/18/2022 at 3.

<sup>136</sup> City of Boulder Comments, 6/13/2022 at 6, 9-10; Equity Framework Workshops Notes, 9/20/2023 at 22.

meet to be able to request “intervenor compensation” for their expenses. Regulated utilities are permitted to fund their legal expenses to litigate cases from ratepayers, and intervenor compensation allows other parties to make that request as well.<sup>137</sup> UCA suggests that the Commission more clearly articulate the standard for intervenor compensation to be awarded and set forth a budget that is addressed earlier in proceedings.<sup>138</sup> However, some stakeholders stated that the bar to meeting the statutory requirements for compensation is too high,<sup>139</sup> and the Commission may need to evaluate if the laws should be adjusted to make it easier to apply for disproportionately impacted communities.<sup>140</sup> Notably, intervenor compensation programs in states like Oregon are being developed to provide specific funding set-asides for environmental justice communities.<sup>141</sup>

Support for intervenor compensation is not universal. A workshop presentation from the Hawaii Public Utilities Commission cautioned that it could result in protracted proceedings with more lawyers involved, particularly where state policies require intervenors to demonstrate that they had a substantive impact on the proceeding for funds to be awarded.<sup>142</sup>

Stakeholders suggested additional approaches to promote more direct participation by representatives of disproportionately impacted communities. These included hiring an equity advocate to design and implement new engagement models that bring more information into proceedings;<sup>143</sup> hiring an ombudsperson responsible for facilitating participation by disproportionately impacted communities, coordinating communications across agencies and utilities, and monitoring progress with community outreach;<sup>144</sup> or creating a “policy amicus” status to encourage participation from communities without full intervenor status by modifying Rule 1200(c).<sup>145</sup>

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**Utilities should engage more productively with disproportionately impacted communities.**

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Stakeholders suggested the Commission consider adopting the following requirements for electric and gas utilities through rulemaking:

- Instead of waiting for an application to be filed, utilities should identify potential impacts and mitigations that could affect disproportionately impacted communities, and then conduct outreach and engagement in advance to shape the application<sup>146</sup>
  - In their applications, utilities should explain how engagement shaped their filings<sup>147</sup>

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<sup>137</sup> City of Boulder Comments, 6/13/2022 at 6, 9-10.

<sup>138</sup> UCA Comments, 6/28/2022 at 12-13.

<sup>139</sup> EJ Coalition Comments, 6/13/2022 at 24-25.

<sup>140</sup> City of Boulder Comments, 6/13/2022 at 6, 9-10; CEO Comments, 7/27/2022 at 9-10.

<sup>141</sup> EJ Coalition Comments, 6/13/2022 at 24-25.

<sup>142</sup> Participation and Engagement Workshop Notes, 2/9/2024 at 27.

<sup>143</sup> City of Boulder Comments, 6/13/2022 at 11.

<sup>144</sup> Public Service Comments, 7/8/2022 at 17.

<sup>145</sup> CEO Comments 6/13/2022 at 18-19, RMI/WRA Comments 6/13/2022 at 12, UCA Comments 6/28/2022 at 13-14

<sup>146</sup> City of Boulder Comments, 6/13/2022 at 10-11; Public Comment, 10/18/2022 at 3.

<sup>147</sup> Case Tiering Workshop Notes, 10/26/2023 at 56.



- Portland General Electric’s distribution system planning process in Oregon is an example
- When a case will have widespread impacts, or impacts on a specific community, utilities should be required to conduct outreach, and to invest baseline amounts in community outreach (partnered with community-based organizations) and targeted programs for income-qualified and disproportionately impacted community customers<sup>148</sup>
- Utilities should measure and report on stakeholder engagement efforts and material outcomes of engagement, including impacts on programs for disproportionately impacted communities<sup>149</sup>
- Utilities should be required to form advisory councils on equity, such as the Community Perspectives Council formed by Pacific Gas & Electric in California<sup>150</sup>
- Utilities can provide education, such as through creating utility energy academies or energy hubs, located throughout the state<sup>151</sup>
- Utilities should compensate community members who participate in engagement opportunities<sup>152</sup>
  - Compensation should be available especially for community members who are low-income and working multiple jobs, providing compensation for their time can make a meaningful difference in their ability to participate<sup>153</sup>
  - Community members should be compensated for sharing their experience and expertise, similar to consultants<sup>154</sup>
  - Many of the individuals and entities working at the Commission and the General Assembly are paid for their time<sup>155</sup>
  - While compensation is preferable, other services like childcare can also make it easier for people to use their time to participate<sup>156</sup>

CEO also provided comments identifying the following data points that it suggests the Commission require utilities to track and provide in relevant proceedings. This would enable the Commission to determine whether the utility’s outreach and engagement over the course of the proceeding was meaningful.<sup>157</sup>

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<sup>148</sup> EJ Coalition Comments, 6/13/2022 at 27.

<sup>149</sup> CEO Comments, 7/27/2022 at 14; EJ Coalition Comments, 6/13/2022 at 48.

<sup>150</sup> EJ Coalition Comments, 6/13/2022 at 28-29.

<sup>151</sup> Case Tiering Workshop Notes, 10/26/2023 at 55.

<sup>152</sup> Case Tiering Workshop Notes, 10/26/2023 at 55.

<sup>153</sup> Case Tiering Workshop Notes, 10/26/2023 at 55; Equity Framework Workshops Notes, 9/20/2023 at 39; Work Planning Workshops, 10/18/2022 at 4, 9.

<sup>154</sup> EJ Coalition, 6/13/2022 at 28.

<sup>155</sup> Informational Meetings Notes, 7/5/2022 at 2.

<sup>156</sup> Informational Meetings Notes, 7/5/2022 at 2.

<sup>157</sup> CEO Comments, 4/9/2024 at 8-9, 18-19.



- What CBOs the utility contacted and engaged with, and whether the utility is providing compensation to them for particular roles
- What communities or demographics the utility engaged
- A summary of any feedback solicited and received as part of the utility’s engagement and outreach processes
- What community needs have been identified in the utility’s proposal, and how they were informed by lessons learned from outreach
- What multilingual efforts the utility made in its outreach and communication efforts
- A description of the type of education, engagement, and outreach conducted by the utility
- Any workforce development proposals in the utility’s filing
- What funding has been distributed to CBOs and community members for their participation in the proceeding

**Staff Recommendations - Improving Communications and Education**

Recommendation	Explanation
<p><b>The Commission should give reasonable advanced notice of public comment hearings and other opportunities for public participation.</b></p>	<p>Stakeholders repeatedly asked for more advance notice of public comment hearings—as much as 30 days—so that participants have time to adjust their work schedule and arrange for transportation and childcare, as needed. While most hearings are scheduled well in advance, media releases are typically released only days in advance. Hearing Officers and Commission advisors should partner with Commission communications staff to ensure staff can publicize comment opportunities well in advance. No rule change is needed; this can be addressed by developing a case intake process that includes communications planning and adequate communications staffing.</p>
<p><b>The Director should prioritize stakeholder suggestions related to plain language, communications, and education.</b></p>	<p>Prioritizing stakeholders’ recommendations to use plain language, improve communications practices, and provide more education, will improve the public’s experience with the agency, create efficiencies for agency staff, increase agency transparency, and promote fairness and equity. In particular, we highlight for the Director’s consideration the following suggested changes:</p> <ul style="list-style-type: none"> <li>● The Director and/or communications staff can create guidance documents and training materials to support staff as they conduct outreach. The Director should ensure teams pair policy staff with communications and/or research staff and that planning processes start early enough to allow for meaningful engagement.</li> <li>● The Director can ensure communications staff are trained to support subject matter experts to incorporate plain language into decisions,</li> </ul>



proceedings, or public participation opportunities with significant equity implications.

- Communications staff can work more closely with the Consumer Affairs staff to develop diverse educational content that is related to the industries and topics that generate customer questions and complaints. Educational content can be tested with focus groups for clarity, and provided to individuals and CBOs to share with their networks.
- Communications staff can diversify how the agency engages publicly, with consideration to web, one-pagers, newsletters, emails, videos, and social media—depending on the issue and audience.
- Communications staff can improve the clarity and consistency of outward-facing communications from the agency on new initiatives or filings; on upcoming opportunities to participate, such as workshops and public comment hearings; and on the status of future projects like rulemakings. Communications staff can also support efforts to “close the loop” by informing commenters of how their comments have been used throughout various processes.
- Communications staff can collaborate with other state agencies on outreach based on topic or audience. This may include working with CDPHE and the Department of Local Affairs to engage with mobile home park residents about energy affordability and gas pipeline safety; connecting with agency staff focused on topics like economic development or just transition who live outside the Denver Metro Area; and potentially engaging with the Colorado Broadband Office where appropriate on energy or technology training issues.
- The Director can lead creation of a Language Access and Language Justice Plan. Stakeholders identified opportunities to provide resources in plain language and languages other than English. The agency has faced challenges with low participation of Spanish speakers in energy-related meetings where interpretation is offered, but also does not often provide robust plain language and/or translated materials. Conversely, Transportation staff regularly work with speakers of languages other than English who are small business owners or staff, and the Consumer Affairs team has a bilingual specialist who regularly works with Spanish-speaking individuals who are calling for assistance with energy issues. Through a Language Access Plan, the agency could conduct an evaluation of the volume of contacts with speakers of languages other than English to prioritize next steps and set clear standards for which materials should be translated, with a focus on critical communications like public safety announcements and commonly used informational resources.
- The Director can provide a more robust and user-friendly calendar of upcoming rulemakings on the Commission’s website. Stakeholders

	<p>raised that they are often uncertain when rulemakings will be coming up, making it difficult to plan to participate. While initiating rulemakings is still dependent on Commissioner decisions and priorities, a designated webpage could allow potentially interested stakeholders to sign up for updates and to provide pre-rulemaking information where needed.</p> <p>Advancing these foundational priorities will require piloting and experimentation regarding new meeting types, communications channels, and event notices, building on lessons learned from this proceeding. Coordination with Consumer Affairs staff may help prioritize those communications activities that might be most impactful for equity and inclusivity.</p> <p>The Director has already taken steps in this direction. The Director has hired a communications consultant who will help with general and strategic communications and an intern who will have an important role in developing visual, educational content, and is in the process of hiring a Communications Director.</p>
<p><b>General- and proceeding-specific communications plans are necessary to increase equitable access to overall Commission activities and specific proceedings.</b></p>	<p>Historically, the Commission has been reactive in nature, responding to the cases filed before it for decision. Stakeholders have emphasized, however, that thoughtful outreach requires proactive planning. Our experience supports the idea that effective communications and engagement requires time and advance planning, especially where concepts are highly technical and relationships or trust are being newly built (<a href="#">see Appendix A</a>).</p> <p>We also believe numerous steps can be taken by the Director and staff teams without requiring specific changes in rules. Stakeholders have emphasized that effective communication requires flexibility. As a result, we recommend that the agency’s rules and policies should provide guidance and training as to how to approach outreach instead of fixed “check the box” requirements.</p> <p>Accordingly, we recommend the agency expand its annual and quarterly planning processes to identify priorities for general, issue-specific, and proceeding-specific communications and outreach. Priorities may be based on anticipated filings, required rulemakings, or emerging issues. These efforts will require different types of support and lead times; in some cases, new activities may need to be piloted which can require additional preparation. Ultimately, more in-depth annual planning will allow the Commission to allocate appropriate funds for venues, food, and interpretation services in its fiscal year budget. Additional planning should embed continuous improvement by tracking meeting attendance, surveying stakeholders, and seeking feedback on improvements. This process would also have the benefit of generating clear information to the public on what activities and proceedings to expect.</p>



### **General Communications**

General and issue-specific communications plans could incorporate listening tours and regular workshops and educational meetings to learn more about the experiences of disproportionately impacted communities, and include regular meetings with local governments, community groups, regulated entities, and members of the public. In some situations, Commission trial staff could consider using information gleaned from this experience to inform their advocacy priorities.

Communications staff, in partnership with appropriate advisory and trial staff, could assist in providing quarterly or periodic public updates through workshops and education. These workshops and educational meetings could summarize pending matters and include procedural information on how communities and individuals can participate, comment, and learn more about Commission proceedings.

### **Specific, Significant Proceedings**

The agency could use staff expertise more effectively and provide more transparency for the public by also enhancing its communications plans for significant proceedings, focusing on equity impact proceedings. Communications staff could support the decision-making process by being brought in early to develop plain-language materials, provide summaries of key milestones, help assess whether there should be a public comment hearing, and ensure that public comment hearings are noticed and run in a relatively standardized and inclusive manner. While some segmentation across staff could be needed, Trial Staff could also consult communications staff if they wanted to conduct outreach to develop portions of their testimony. Specific communications plans can help increase the public's understanding of the issues being contemplated in the proceeding, ensure the public knows how they can get involved in the proceeding, and/or help communities and potential parties prioritize their involvement.<sup>158</sup>

Administrative proceedings such as rulemakings offer more flexible opportunities for stakeholder engagement. When Commission advisory staff is working with Commissioners on the scope and objectives of a rulemaking (or pre-rulemaking), advisors should collaborate closely with communications staff. These staff can help build more robust notice lists; develop one-pagers and online materials about the purpose of the rulemaking; host meetings about how to participate in the rulemaking as mentioned by statutes; and work with Commission advisors and Hearing Officer(s) to design a process that facilitates more inclusive participation by the public. This could include mapping out and creating agendas for workshops, online surveys, focus groups, panel presentations, and other activities. An increasing number of Commission rulemakings invoke activities by other state agencies and may benefit from bringing representatives of

<sup>158</sup> In 2024, these issues would have been towing, energy affordability, the clean heat plan, and the transportation electrification plan.

	<p>those agencies to speak about the intersections. The focus of this work should be on rulemakings that touch on topics similar to invoked by equity impact proceedings—i.e., rulemakings that have an actual or potential impact to income-qualified customers and customers of disproportionately impacted communities. We believe that hearing from customers about their experience interacting with utilities is critical for ensuring effective regulation.</p>
<p><b>Participation incentives may be appropriate in certain situations but will require careful implementation.</b></p>	<p>Some stakeholders suggest the agency provide compensation to representatives of disproportionately impacted communities when they are asked to provide their perspective, input, and experience. Staff understands that other state agencies have provided compensation for stakeholders who are participating outside of a paid work opportunity.<sup>159</sup> However, the Department of Regulatory Agencies, which oversees the administration of the PUC, does not currently have a fiscal policy that allows divisions such as the Commission to offer incentives, and this is a necessary step for the agency to provide this service directly.</p> <p>Staff agrees that providing participation incentives may have merit in certain situations. If the agency hosts a focus group of representatives of disproportionately impacted communities to understand their specific needs relative to a certain energy program, it could be appropriate to provide some incentive to stakeholders to compensate them for their time and expertise. More recently SB 24-207 requires the Commission to consider compensation in the context of community solar gardens outreach activities.<sup>160</sup> In the meantime, the agency may be able to partner with outside entities to co-host engagement opportunities where those entities are permitted to offer incentives <u>(see Appendix B)</u>.</p>
<p><b>The agency will need support for hiring, contracting, budgeting, and planning to make communications and outreach more effective.</b></p>	<p>Staff with communications expertise are needed to improve public participation and education. The agency currently is in the process of hiring a Communications Director. While the Director can provide some of the types of communications, education, and outreach services we describe above, the volume of work is increasing dramatically. Moreover, the complexity of the work the Commission does, the variety of industries it regulates, and the need for both case-specific and general outreach, will require additional staff support.</p> <p>The agency has only ever had one fully dedicated staff communications position. However, the expectations coming from stakeholders represent a significant expansion of this communications role. The agency may need support from the Colorado General Assembly to authorize funding for agency staff, and support from the Department of Regulatory Agencies to expedite</p>

<sup>159</sup> See, e.g., Colorado Department of Human Services, Operation Memo: Sponsored Workgroups, Boards, and Commissions Compensation & CDHS Program Eligibility (Oct. 31, 2023), available at <https://drive.google.com/file/d/1INtq5Ube500CFCOr2AEJ5BgQRx52Woqf/view>.

<sup>160</sup> § 40-2-127.2(8)(a)(VII), C.R.S.



hiring and procuring contractors where needed for particular functions (for example, if a rulemaking may benefit from hiring a CBO to host and facilitate meetings). The hiring and procurement processes must become clearer and more timely, so that the agency can plan for the increasingly complex and stakeholder-oriented processes that are required of it. Additionally, as the agency has commonly hired subject matter expertise in the past, this process will involve recruiting individuals with new skills that can build powerful teams to conduct policy-related outreach.

The agency may also need support from the General Assembly to consider appropriate timelines for statutory requirements to go into effect. Expeditious statutory deadlines keep processes moving but can impede thoughtful, robust, and coordinated stakeholder engagement, particularly if staff is under resourced.

**Staff Recommendations - Improving Public Participation in Specific Proceedings**

Recommendation	Explanation
<p><b>Consider rules that require utilities to directly support outreach and to address public comments in adjudicated proceedings.</b></p>	<p>Staff initially proposed creating a new category of proceedings, designated as “equity impact proceedings,” to signal the proceeding could have a greater effect on equity and disproportionately impacted communities. In the discussion that followed, stakeholders raised various perspectives about the different roles the Commission and the local utility have in conducting outreach about upcoming or ongoing proceedings.</p> <p>First, we note that utilities sometimes have leeway in deciding when to file a case, but once started, statutory timelines for completing the case apply. Since time constraints arise once a case is started, we recommend the Commission consider rules that require utilities to lead the following <b>pre-filing outreach</b>:</p> <ul style="list-style-type: none"> <li>• Energy utilities filing equity impact proceedings should be required to conduct and report on pre-filing outreach. This includes conducting informational meetings and workshops for applications regarding retail customer programs.<sup>161</sup> In their filings, utilities should be required to demonstrate how they engaged communities in a culturally sensitive way, including whether they engaged with CBOs to improve their processes.</li> <li>• Utilities should be required to identify actually or potentially impacted disproportionately impacted communities, and present a plan to notify those communities as part of the filing. The plan could include notification to individuals, CBOs, or networks. The notice plan should include a plain-language summary of the requests and issues in the case, translated into languages besides English if relevant to the impacted portion(s) of the service territory.</li> </ul>

<sup>161</sup> § 40-2-108(3)(c)(II), C.R.S.



	<p>Second, we recommend the Commission consider rule changes to require that utilities and intervening parties design the procedural schedule to best promote effective public comment hearings. Public comment hearings will be most effective when they are scheduled with sufficient advance notice to enable word to go out; when they are held in a format that makes sense for communities of interest to participate (<i>i.e.</i>, in person after work hours for some communities, and virtually in the morning for others); and held early enough in the proceeding to allow parties to respond to ideas raised in comments through their written testimony or oral testimony at the evidentiary hearing.</p> <p>Third, it may make sense to require that utilities address in their rebuttal testimony key trends raised by public comments as of the time of the filing. This ensures that public comments are being reviewed by the utility, which must state whether and how the comment relates to its position.</p> <p>Given the number of litigated applications from utilities on topics like retail customer programs, it may be more practical for utilities and disproportionately impacted community representatives to build relationships through an ongoing advisory group rather than solely through one-off, proceeding-specific stakeholder meetings. The Commission should propose rules requiring utilities to explain their outreach practices, and potentially to include proposals for equity advisory groups within their first energy equity plan application.</p>
<p><b>Consider rules that require potential parties to state in their intervention filings whether they will address the interests of certain disproportionately impacted communities as part of their advocacy in the case.</b></p>	<p>In workshops, stakeholders like UCA and CEO discussed how they are beginning to incorporate perspectives from disproportionately impacted communities in their advocacy. As this process evolves, the Commission can incorporate equity in proceedings as soon as the case starts by requiring parties to explain in their intervention filings whether and how they expect to address equity interests. Under state law and Commission practice, certain parties may intervene “by right” in all cases before the Commission including Commission trial staff, UCA, and CEO. Other parties can intervene by filing a formal request with the Commission, which includes the parties’ explanation of why they have a pecuniary or tangible interest in the outcome of the case. When a party files a notice of its intervention by right or request for permissive intervention, we suggest requiring this filing also address equity issues including:</p> <ol style="list-style-type: none"> <li>a. Whether the party intends to advocate for one or more disproportionately impacted communities</li> <li>b. A detailed description of outreach, such as informational meetings or workshops, that the party provided or plans to provide to disproportionately impacted communities</li> <li>c. Concerns, issues, or positions the party anticipates raising with regard to disproportionately impacted communities and equity overall</li> </ol> <p>Understanding how party interests could overlap with disproportionately impacted community interests will allow the Commission to better understand what interests are adequately represented in the case; differentiate party interests so that robust community involvement can be included more readily;</p>





	<p>and identify if any further outreach, communication, or process is necessary in addition to that which comes through initial filings.</p>
<p><b>Consider modifications to rulemaking procedures to require informational meetings, workshops, and public comment hearings for rulemakings that concern retail customer programs.</b></p>	<p>A rulemaking is a type of administrative proceeding that is initiated by the Commission with a decision called a Notice of Proposed Rulemaking (“NOPR”). Like other state agencies, the Commission has to follow the State Administrative Procedure Act (“APA”) under Title 24 in Colorado law. A rulemaking must address which rules are proposed for change and hold at least one public comment hearing, and the final rules must be issued within 180 days of the last hearing.</p> <p>Rulemakings can be complex, and often involve creating and tracking technical redlines with language that is proposed by multiple stakeholders. They can also offer more flexibility than adjudications because the hearing officer can host more interactive events, such as workshops, and a lawyer is not required for comments to be filed.</p> <p>Foundationally, the Commission should modify its Practice and Procedure Rule 1306 to require informational meetings, workshops, and public comment hearings specifically targeted to disproportionately impacted communities<sup>162</sup> for at least those rulemakings that involve retail customer programs, or more broadly for rulemakings that are similar to the topics covered within equity impact proceedings. UCA also suggested an approach to modify the regulatory analysis process required under the APA to address disproportionately impacted communities.<sup>163</sup> When the Commission proposes rules, it could consider incorporating similar themes by requiring decisions opening rulemakings to address whether disproportionately impacted communities or income-qualified customers could be specifically affected by the rulemaking. Specific activities that are appropriate for the issues and audiences involved in the rulemaking can be developed as part of more robust communications plans.</p>
<p><b>Continue making public comment opportunities increasingly inclusive and accessible to the public.</b></p>	<p>The objectives, agenda, and desired outcomes for public comment opportunities can often be unclear to interested stakeholders. This, in turn, makes it challenging for the public to know how to participate and understand the value of their participation. This is true both for written and oral public comments, though both have their own sets of challenges and opportunities.</p> <p>Staff recommend that the Director, Commissioners, advisors, and administrative law judges collaborate to increase the effectiveness, inclusiveness, and consistency of how public comment hearings are structured. Communications staff can be more embedded in the public comment hearing process as partners who can help ensure that hearings are advertised, held at a time and location that makes sense for potential audiences, and run in a way that promotes not only clarity for the record, but also a welcome experience</p>

<sup>162</sup> § 40-2-108(3)(c)(II), C.R.S.

<sup>163</sup> UCA Comments, 6/28/2022 at 14-18.



	<p>for participants. Importantly, they can help create plain-language agendas and materials that help participants understand what to expect from the event, and can work directly with stakeholders who have questions in ways that hearing officers could not do. More robust practices for hosting in-person meetings, such as what amenities may be appropriate, would aid in creating consistency.</p> <p>Recent public comment hearings have incorporated some changes to improve the participant experience. Among these efforts include adding informational opening statements, providing clearer cues for when participants are called to speak, and developing handouts with QR codes for written comments for individuals who may not want to speak in front of a judge.</p> <p>This recommendation does not necessarily advocate for more public comment hearings—the Commission and judges host dozens annually—but when hearings are held, attendees should be able to understand what the process might be like and how they can be most effective in representing their perspectives.</p>
<p><b>As the Commission’s E-Filings System for electronic records is being replaced, the Director can engage users to assess the process and what kinds of education may be helpful.</b></p>	<p>The Commission’s E-Filings System for electronic records continues to receive criticism from users, who find it difficult to find specific proceedings, search for keywords, set up accounts, etc. E-Filings software has limitations currently which prevent us from implementing many stakeholder suggestions, such as standardizing filing terminology or modifying the search function. However, staff who are involved in the multi-year project to replace E-Filings and import decades of historical proceeding records into a new system are interested in and eager to engage with prospective users as that project gets closer. By working with different audiences who may have different needs for docket tracking, staff can determine how to improve usability (within reason) and identify where additional training or materials could be developed to support novice or experienced users.</p>
<p><b>Statutory changes by General Assembly could provide further support for legal representation of disproportionately impacted communities in administrative agency proceedings.</b></p>	<p>Stakeholders raised that Commission proceedings are complex and can be expensive to participate in. This is in part because proceedings at the Commission are subject to certain legal requirements that Commission rules cannot change. Throughout this report, staff has provided recommendations to improve engagement so that equity considerations can be woven into proceedings without always requiring direct participation in proceedings.</p> <p>Importantly, however, stakeholders also recommended the Commission consider ways that disproportionately impacted communities could more effectively represent themselves. This may be a more challenging prospect under current state laws. Two legal requirements are particularly significant as they relate to formal participation by disproportionately impacted community representatives.</p>



Pro Se Status. Legal representation is necessary to present factual evidence under most circumstances.<sup>164</sup> The Commission cannot authorize individuals who are not lawyers to practice law.<sup>165</sup> However, a limited exception is *pro se* status. *Pro se* representation is limited by state law and regulated by the Colorado Supreme Court, and the Commission does not have the authority to expand the situations in which it can be used. *Pro se* representation is primarily limited to non-adjudicatory matters (like rulemakings), and in adjudicatory proceedings, to actions which do not require an attorney’s specialized knowledge, do not constitute the practice of law, and represent only the interests of an individual or closely-held entity.<sup>166</sup> This legal limitation is also why the Commission cannot create a separate “policy *amicus*” status in rules.<sup>167</sup>

Representation by UCA. According to state law, an individual or entity who is represented by counsel may be prohibited from intervening in a proceeding if their interest is already adequately represented by existing parties to the case.<sup>168</sup> UCA represents the interests of residential, small business, and

<sup>164</sup> As a general rule, “A party or an amicus curiae shall be represented by an attorney at law, currently in good standing before the Colorado Supreme Court or the highest tribunal of another state as authorized in rule 205.4, C.R.C.P.” before the Public Utilities Commission. 4 C.C.R. § 723-1:1201(a). The Commission’s rules provide that a non-attorney may generally represent “his or her own interests” or the interests of a “closely held entity.” §§ 723-1:1201(b)(I)-(II). This rule does not specify in what matters a non-attorney may provide representation (adjudicatory or). A non-attorney may also represent the interests of “a partnership, corporation, association, or any other entity” in a limited set of actions which do not require an attorney’s specialized knowledge and do not constitute the practice of law. §§ 723-1:1201(b)(III)-(V).

<sup>165</sup> Indeed, the Commission and its administrative law judges have a duty to enforce Rules 1201(a) and (b) of the Rules of Practice and Procedure, 4 CCR 723-1, in order to ensure that parties are represented by counsel in adjudicatory proceedings, unless they prove they fall within an exception under Rule 1201(b), and to prevent the unauthorized practice of law by non-attorneys in adjudicatory proceedings before the Commission. “From what has been said we conclude that the creature of the legislature, the Commission with its rule-making power, does not in any way have the prerogative of superseding the exclusive power of the judiciary, ultimately residing in this Court, to determine what is or is not the practice of law and to restrict such practice to persons licensed by this Court to serve as lawyers.” *Denver Bar Ass’n v. Pub. Utilities Comm’n*, 391 P.2d 467, 471 (Colo. 1964)

<sup>166</sup> An example of a closely held entity is a family-owned corporation. For example, Colorado statute authorizes the PUC to permit *pro se* appearances in non-adjudicatory matters before it: “The commission may by general rule or regulation provide for appearances *pro se* by, or for representation by authorized officers or regular employees of, the commission’s staff, corporations, partnerships, limited liability companies, sole proprietorships, and other legal entities in certain matters before the commission.” C.R.S. § 40-6-109(7).

<sup>167</sup> The Commission previously rejected a similar proposal in Proceeding No. 19R-0483ALL given requirements in state law. Additionally, Advisors are not clear on commenters’ intention in a “policy *amicus*” since policy comments from non-parties can already be provided in public comment— thoughtful improvements in how the agency solicits and collects public comments may yield the same result as this proposal.

<sup>168</sup> See *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass’n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case’s judgment. See *Denver Chapter of the Colo. Motel Ass’n v. City & County of Denver*, 374 P.2d 494, 495–96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). See also *Feigen v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001) (“if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why this representation is not adequate”); *Glustrom v. Pub. Util’s Comm’n*, Case No. 11CV8131 (Order Dismissing Appeal, July 11, 2012) (interpreting § 40-6-109, C.R.S.).

	<p>agricultural ratepayers in energy proceedings at the Commission.<sup>169</sup> UCA is an “intervenor of right,” along with Commission trial staff and CEO, meaning they can participate in any case upon timely notifying the Commission. UCA’s representation is broad under statutes, and it is tasked with considering environmental justice, although statutes do not explicitly use the term disproportionately impacted communities.</p> <p>It is possible that in some cases, the interests of disproportionately impacted communities could differ from or conflict with the interests of ratepayers who do not live in those communities. Representing both sets of interests may be challenging, and UCA has stated that it does not wish to be a barrier to interventions from representatives of disproportionately impacted communities.</p> <p>Given these legal complexities, statutory changes may be necessary to clarify whether UCA or other entities are best situated to represent disproportionately impacted communities, given their current directive to represent residential ratepayers more broadly. Alternatively, while it does not do so at this time, an entity such as the Office of Environmental Justice (the new name of the EJ Program) could engage in administrative agency proceedings to bring forward issues related to disproportionately impacted communities. However, with equity and disproportionately impacted community issues addressed within the missions of UCA, CEO, and the Office of Just Transition, statutory clarity may become helpful in the future—both for these agencies and to ensure that community voices are not inadvertently limited by preexisting statutes.</p>
<p><b>Intervening parties can spread the word about opportunities for public participation.</b></p>	<p>The scope of equity issues within regulated industry has the potential to touch almost every Coloradan. Further, the Commission is not a familiar entity to many impacted communities and customers. It will take the efforts of many organizations and entities, including those that participate in proceedings, to spread the word about Commission public participation opportunities.</p>

**Identifying Disproportionately Impacted Communities**

SB 21-272 mandates several considerations for how the Commission should identify and treat disproportionately impacted communities through rules. However, case-specific facts may be necessary to make decisions about issues like how and when it is necessary to prioritize between disproportionately impacted communities, how to apply the definition in a way that advances outcomes but does not arbitrarily limit vulnerable customers’ access to services, and how to use a geospatial definition to provide benefits that may not be tied to one’s location.

<sup>169</sup> § 40-6.5-104(1), C.R.S.



## Stakeholder Perspectives and Recommendations

### Flexibility will be beneficial in identifying disproportionately impacted communities.

Stakeholders generally preferred a flexible application of the definition of disproportionately impacted communities, noting that state law affords flexibility to the Commission when it “identifies” disproportionately impacted communities through a rulemaking.<sup>170</sup> Stakeholders have raised three major reasons why the definition of disproportionately impacted communities should be kept flexible, so that it can be expanded beyond census block groups.

First, stakeholders suggested there should be an opportunity to identify additional disproportionately impacted communities based on common conditions. Examples of common conditions are energy burdened households, which are not tied to a particular geographic area; fixed-income seniors; people with disabilities; and small restaurants and grocery stores.<sup>171</sup> These types of conditions are not captured by HB 23-1233 or by the EnviroScreen mapping tool when identifying disproportionately impacted communities.<sup>172</sup> However, stakeholders have stressed that these conditions, and especially disability, can significantly intersect with poverty and race.<sup>173</sup>

Second, Colorado Natural Gas suggested that, to the extent the designation of disproportionately impacted communities is intended to support effective community-based outreach, it may make sense to specifically identify certain towns within its service territory as disproportionately impacted communities, since many census block groups are rural and lightly populated.<sup>174</sup> Similarly, some stakeholders emphasized the need to consider geographical equity from the perspective of the urban versus rural divide, as rural communities in Colorado tend to have high energy burden, live in colder climates, and can be hard to reach due to population density.<sup>175</sup>

Third, stakeholders suggested that communities should be able to self-designate as disproportionately impacted. Stakeholders suggested the Commission consider pathways like Public Service’s Higher-Emissions Community model from the Transportation Electrification Plan;<sup>176</sup> the Illinois Power Agency’s Environmental Justice Community designation process, which includes a third-party evaluator;<sup>177</sup> allowing potential disproportionately impacted communities to make cases for admission that could be granted or denied by the Commission;<sup>178</sup> and using a miscellaneous proceeding in which utilities would file lists of disproportionately impacted communities for approval by the Commission, which could be augmented

<sup>170</sup> EJ Coalition Comments, 2/23/2023 at 7 (stating that subsection (c)(I) is additive and complementary to (d), giving the Commission flexibility).

<sup>171</sup> EOC Comments, 6/13/2022 at 15; City of Boulder Comments, 2/21/2023 at 10-11.

<sup>172</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 18.

<sup>173</sup> Equity Framework Workshops Notes, 9/20/2023 at 22.

<sup>174</sup> Colorado Natural Gas Comments, 1/19/2023 at 2; Colorado Natural Gas Comments, 2/23/2023 at 4-5, 9.

<sup>175</sup> CLEER Comments, 3/14/2024; AIMF Comments, 3/29/2024.

<sup>176</sup> CEO Comments, 2/23/2023 at 15.

<sup>177</sup> EJ Coalition Comments, 3/9/2023 at 5-6.

<sup>178</sup> Colorado Natural Gas Comments, 2/23/2023 at 6.

based on public comments.<sup>179</sup> Stakeholders cautioned against creating undue burdens for communities to apply for this status and urged that any criteria to qualify should be clear.

**Disproportionately impacted community status may have different effects in different proceedings.**

Stakeholders pointed out several different cases for how disproportionately impacted communities could be considered within different contexts. Given the Commission's broad regulatory authority and the different way it interacts with regulated entities, the impacts of regulatory decisions on disproportionately impacted communities will differ depending on the industry and particular issues of each case. To this end, stakeholders suggest the Commission create both general and issue- or geographic- specific protections for disproportionately impacted communities. For example, the Colorado Energy and Carbon Management Commission establishes additional requirements including alternative location analysis, longer consultation periods, and community outreach plans for proposals for oil and gas development in or near disproportionately impacted communities.<sup>180</sup> Power plant impacts, reliability improvements, and the locations of infrastructure investments were raised by stakeholders as needing additional consideration because of their localized impacts to the environment and public health.<sup>181</sup>

The Commission could require utilities to assess whether there is equitable access to customer programs in disproportionately impacted versus non-disproportionately impacted communities. For example, stakeholders identified that barriers to enrolling in utility renewable energy programs or a lack of culturally sensitive education about the benefits of certain programs may result in lower participation.<sup>182</sup> The Commission could also require utilities to design programs and plans specifically targeted to the needs of disproportionately impacted communities.<sup>183</sup> The City of Boulder raised the need for targeted programs for mobile home park residents.<sup>184</sup> Public Service proposed applying geographic equity considerations in its distribution system plan to analyze the distribution of distributed energy resources.<sup>185</sup>

Finally, the Commission, its staff, regulated entities, and other stakeholders could use the concept of disproportionately impacted communities to help improve outreach practices, including to become more familiar with local conditions and local perspectives.<sup>186</sup> Colorado Natural Gas noted that its rural service area has only a handful of population centers which would be suited to hosting community meetings at libraries, recreation centers, or other community gathering centers.<sup>187</sup> The EJ Coalition suggested that regulated utilities should be required to invest a minimum dollar amount for community outreach when

<sup>179</sup> CEO Comments, 2/23/2023 at 15.

<sup>180</sup> Slides from January 26, 2023 Workshop at 34-40.

<sup>181</sup> UCA Comments, 6/28/2022 at 5-6; EJ Coalition Comments, 6/13/2022 at 12, 14; CEO Comments, 6/13/2022 at 21-22.

<sup>182</sup> See, e.g., EOC Comments, 6/13/2022 at 21; Public Comments, 5/21/2022 at 1; Equity Framework Workshops Notes, 9/20/2023 at 41.

<sup>183</sup> EJ Coalition Comments, 2/23/2023 at 12.

<sup>184</sup> City of Boulder, 2/21/2023 at 6-8.

<sup>185</sup> Public Service Comments, 7/8/2022, at 11.

<sup>186</sup> EJ Coalition Comments, 2/23/2023 at 12.

<sup>187</sup> Colorado Natural Gas Comments, 2/23/2023 at 2, 4-5, 9.

a case affects disproportionately impacted communities or includes program offerings targeting income-qualified customers or disproportionately impacted communities.<sup>188</sup>

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**Disproportionately impacted communities and income-qualified customers are different, but related, populations.**

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Stakeholders generally agreed that income for a census block group is a consideration for whether the census block group is disproportionately impacted, but that any customer could be income-qualified<sup>189</sup> regardless of geography. Conversely, as stakeholders have pointed out, there also could be residents within a disproportionately impacted community that are not income-qualified.<sup>190</sup> Stakeholders have pointed out the language of many statutes with equity considerations regularly reference both income-qualified customers and disproportionately impacted communities.<sup>191</sup> This interaction between income and geography creates challenges for making programs generally available to a census block group that is disproportionately impacted.

While residents who are income-qualified and who are living in a disproportionately impacted community may be conceptually different, stakeholders raise that they may share similar challenges and barriers. This includes lack of ability to fund energy upgrades upfront, lack of access to credit or financing, renting rather than owning, requirements for proof of income or lawful residence, etc.<sup>192</sup> Stakeholders are thus converging on an approach for energy programs which would involve tiering rebates or incentives, with the largest benefits going to those customers who are both income-qualified and in disproportionately impacted communities, and lower benefits going to customers who are one but not the other, or neither.<sup>193</sup> Both EOC and the City of Boulder, for example, emphasize that energy burden or energy insecurity reduction, and thus income eligibility, should be critical components of retail customer programs designed to address equity.<sup>194</sup> Specifically, the City of Boulder states that if customer participation does not reduce energy insecurity, it does not achieve equity outcomes.

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**Using EnviroScreen mapping tool to identify disproportionately impacted communities creates benefits, but also requires training and presents data consistency challenges.**

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HB 23-1233 explicitly recognizes the EnviroScreen mapping tool, which was developed by Colorado State University and is managed by the CDPHE EJ Program. Stakeholders were universal in stating that EnviroScreen is the best and most consistent source of data about how to identify and visualize disproportionately impacted communities, although a number of commenters suggested that it should not be the only source of information. Two primary bases for comments on EnviroScreen's deficits were its exclusion of mobile home parks, which were subsequently brought into the definition of

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<sup>188</sup> EJ Coalition Comments, 6/13/2022 at 27.

<sup>189</sup> Attachment B to Decision No. R23-0009-I includes a list of statutory references to income-qualified customers and disproportionately impacted communities. In some cases, statutory terminology varies.

<sup>190</sup> See, e.g., EOC Comments, 6/13/2022 at 5-6, 9-11.

<sup>191</sup> See, e.g., EJ Coalition Comments, 2/23/2023 at 5.

<sup>192</sup> City and County of Denver Comments, 6/13/2022 at 12-14.

<sup>193</sup> See, e.g., Decision No. R24-0114-I, issued February 23, 2024 at ¶ 16; CEO Comments, 4/9/2024 at 23-24.

<sup>194</sup> EOC Comments, 3/14/2024 at 11; City of Boulder Comments, 3/14/2024 at 4-6.

disproportionately impacted communities by HB 23-1233, and concerns that U.S. Census-identified disproportionately impacted communities could become gentrified.<sup>195</sup>

However, using EnviroScreen raises practical concerns for Commission processes. The CDPHE EJ Program has not yet fully landed on a cadence or scope for updating the tool. This evolving schedule for updates creates the risk that an update could be published in the middle of a Commission proceedings. This would cause confusion about which version of EnviroScreen the Commission should use when making decisions about impacts and could create years- or decades-long ripple effects depending on the type of investment or program. Stakeholders suggested that this be managed by applying the EnviroScreen version in effect at the time the proceeding is filed.<sup>196</sup> Stakeholders also suggested the Commission request data archiving from CDPHE,<sup>197</sup> and that agency staff coordinate regularly with CDPHE to ensure there is a source of information on what version of EnviroScreen is most current and any unique issues about how it is used in Commission contexts.<sup>198</sup> Stakeholders also suggested the Commission may need rules that would require notice to customers if an EnviroScreen update means they are no longer in a disproportionately impacted community.<sup>199</sup>

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**Utilities have differing technical capabilities regarding their use of the EnviroScreen mapping tool.**

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While regulated energy utilities have found EnviroScreen largely easy to use and have been able to provide maps comparing their service areas, they have also noted certain customer data is not always tracked geospatially or that they would have to develop new data integrations to connect billing or other customer systems to census data. For example, Public Service uses a program called GeoSpatial Analysis Pro to match premises from the billing and accounting system to a census block group, but notes that this does not account for multimeter premises and it was not yet able to incorporate mobile home parks.<sup>200</sup> Black Hills Energy initially stated that its meter locator database is organized by county,<sup>201</sup> although it subsequently developed the capability to use geospatial data to identify meters within census blocks.<sup>202</sup> Atmos Energy claimed it did not know how to determine the total number of customers who are in or not in disproportionately impacted communities in its service area.<sup>203</sup>

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<sup>195</sup> City of Boulder Comments, 2/21/2023 at 8-10.

<sup>196</sup> Colorado Natural Gas Comments, 2/23/2023 at 2.

<sup>197</sup> City of Boulder Comments, 2/21/2023 at 4; CEO Comments, 2/23/2023 at 11-12; EJ Coalition Comments, 2/23/2023 at 3.

<sup>198</sup> CEO Comments, 2/23/2023 at 11, 15; Colorado Natural Gas Comments, 2/23/2023 at 2-23; EJ Coalition Comments, 2/23/2022 at 2-4.

<sup>199</sup> EJ Coalition Comments, 2/23/2023 at 2.

<sup>200</sup> Public Service Comments, 3/14/2024 at 7-9.

<sup>201</sup> Black Hills Energy Comments, 1/19/2023 at 1.

<sup>202</sup> Black Hills Energy Comments, 3/28/2024 at 1.

<sup>203</sup> Atmos Energy Comments, 1/19/2023 at 1.



**Stakeholders offered differing perspectives on whether disproportionately impacted community status should apply to customer classes other than residents.**

Colorado Natural Gas suggested that disproportionately impacted community status should only apply to residents as SB 21-272 refers to households in identifying these communities and commercial customers are better-positioned to participate in proceedings like rate cases that could impact them.<sup>204</sup> However, other stakeholders suggested that disproportionately impacted community status could apply to certain non-residential customers, including small businesses that operate in or serve disproportionately impacted communities, or are minority-owned.<sup>205</sup> The City of Boulder proposed that pre-K through 12 educational facilities be considered part of disproportionately impacted communities.<sup>206</sup> CEO further raised a data challenge in that multifamily customers may potentially be classified as “commercial” customers in some cases, which could impact income-qualified customers if they were excluded from programs based on customer class.<sup>207</sup>

**There should be opportunities to target or prioritize within disproportionately impacted communities, but limited guidance is available as to how.**

There are many criteria that comprise the definition of disproportionately impacted communities. Stakeholders sometimes suggested that disproportionately impacted community status be treated largely as a binary.<sup>208</sup> However, HB 23-1233 provides the Commission with the ability to target or prioritize within disproportionately impacted communities without it constituting an undue preference.<sup>209</sup> While utilities raised concerns about being directed to target within disproportionately impacted communities,<sup>210</sup> these were expressed prior to HB 23-1233’s passage and other stakeholders commented that having flexibility to direct limited program funding dollars to communities that are most in need, or are uniquely well-positioned for particular programs, could be valuable.<sup>211</sup>

**The Commission should improve its consultation and engagement with federally recognized Tribes and American Indian/Alaska Native populations.**

Stakeholders had several recommendations for how the Commission should improve its consideration of and engagement with Indigenous communities. In particular, stakeholders stated that engagement with federally recognized Tribal Nations such as the Ute Mountain Ute and the Southern Ute should be improved. First, the EJ Coalition and Task Force recommended that the Commission – and other state

<sup>204</sup> Colorado Natural Gas Comments, 2/23/2023 at 7-9.

<sup>205</sup> CEO Comments, 2/23/2023 at 25; CEO Comments, 4/9/2024 at 25; City of Boulder Comments, 2/21/2023 at 20; EJ Coalition Comments, 2/23/2023 at 15.

<sup>206</sup> City of Boulder Comments, 2/21/2023 at 19.

<sup>207</sup> CEO Comments, 4/9/2024 at 24.

<sup>208</sup> See, e.g., CEO Comments, 2/23/2023 at 22, 24.

<sup>209</sup> § 24-4-109(2)(I)(C), C.R.S.

<sup>210</sup> Colorado Natural Gas Comments, 2/23/2023 at 8.

<sup>211</sup> EJ Coalition Comments, 2/23/2023 at 12-13 and 3/9/2023 at 6.

agencies – hire a Tribal Advisor or Liaison.<sup>212</sup> Second, stakeholders recommended that the Commission adopt a Tribal Consultation Policy.<sup>213</sup> Third, stakeholders requested that staff provide land acknowledgments at workshops. Fourth, stakeholders recommended that the agency engage with both federally recognized Tribal Nations and with American Indian/Alaska Native populations, many of whom live in urban areas.<sup>214</sup> Specifically, the Commission could partner more with local community centers and legal aid offices to provide education and information to these populations.<sup>215</sup> Fifth, the Task Force applauded the Commission’s practice in an electric resource plan proceeding of referring to a power plant named after a federally recognized Tribe by a different name,<sup>216</sup> which could be formalized. Finally, the Northern Cheyenne Tribe of Montana specifically requested that the Commission make rules to address concerns about energy-related development that impacts the Sand Creek Massacre National Historic Site.<sup>217</sup>

**Staff Recommendations**

Recommendation	Explanation
<p><b>The Commission should propose rules that adopt a flexible structure for identifying disproportionately impacted communities, especially regarding common conditions.</b></p>	<p>Staff agrees with stakeholders that there should be some flexibility in the definition of a disproportionately impacted community, at least initially, to allow room for further development of this concept. For example, stakeholders have pointed out that disability is not specifically called out in SB 21-272 or HB 23-1233 but is intersectional with income and race. To address this gap, the Commission or utilities could offer ASL interpretation at public comment hearings,<sup>218</sup> and electric utilities could promote solar plus storage or other resilience programs to customers with electric medical devices or temperature-sensitive conditions. While we do not believe there is a barrier to these actions currently, rules could provide a more specific forum to supplement census block group populations with common condition populations, and to allocate targeted program budgets in the interests of broader access and equitable distribution of benefits.</p> <p>We suggest the Commission adopt, for now, the statutory language at § 24-4-109, C.R.S., as a base definition in rules, and provide flexibility to add to the existing list of census block groups that are considered disproportionately</p>

<sup>212</sup> EJ Coalition Comments, 6/13/2022 at 15-16; Task Force Report at PDF p. 42.

<sup>213</sup> EJ Coalition Comments, 6/13/2022 at 15-16.

<sup>214</sup> Equity Framework Workshops Notes, 9/20/2023 at 41.

<sup>215</sup> EOC Comments, 6/13/2022 at 16-17.

<sup>216</sup> Task Force Report at PDF p. 43.

<sup>217</sup> Comments of William Walksalong, 10/25/2023 at 8. The Commission recently opened Proceeding No. 24R-0306E in response to this request.

<sup>218</sup> See, e.g., RMI/WRA Comments, 6/13/2022 at 10. The Commission does make this service available through the Language Access Form.



	<p>impacted communities based on common conditions. This model is reflective of the approach used in Washington, which includes “vulnerable populations” (unemployed, lack of access to health care, etc.) and “highly impacted communities” (similar to census block groups with high EnviroScreen scores).<sup>219</sup></p>
<p><b>The Commission should propose rules that create an energy equity plan, a new type of multiyear application for electric and gas utilities which coordinates activities related to income-qualified customers and disproportionately impacted communities.</b></p>	<p>Concurrent efforts to implement SB 21-272, stakeholders have been providing comments in Proceeding No. 23M-0013EG regarding improvements for income-qualified customer programs. Given the recommendation to create flexibility in the definition of disproportionately impacted communities, and given that the understanding of what constitutes equity in the energy system remains dynamic, Staff proposes that a new application process be created to set a foundation for each utility.</p> <p>Specifically, Staff recommends the Commission introduce a requirement for electric and gas utilities to periodically file applications for energy equity plans. These plans would be adjudicated and would contain various components to identify disproportionately impacted communities and other common conditions within the utility’s service territory, outline customer-centric equity priorities, share anticipated energy equity proceedings, propose planned actions to meet priorities, articulate metrics to measure progress, and a file “look-back” on progress from previous plans. Staff believes these components will ensure that utilities have an accurate understanding of the makeup of their service territory, adequately consider their most vulnerable customer’s needs, and have a plan – both through proceedings and budget – to improve equitable outcomes within the energy system. The plan will also give intervenors and the Commission and opportunity to influence equity priorities, actions, and metrics through adjudication, and can help prospective parties plan their regulatory priorities. See <a href="#">Appendix C</a> for details about proposed plan components and outcomes.</p>
<p><b>The Commission should propose rules that reference EnviroScreen as the primary and foundational tool to identify disproportionately impacted communities but allow for flexibility</b></p>	<p>As part of implementing § 24-4-109, C.R.S., to define disproportionately impacted communities, Staff recommends the Commission propose rules to incorporate the EnviroScreen mapping tool by reference as a primary tool to identify disproportionately impacted communities. EnviroScreen was developed specifically to incorporate the statutory definition that applies to the Commission, and it is developed and maintained by the EJ Program. While EnviroScreen is not perfect, we do not believe it would be productive,</p>

<sup>219</sup> Washington Utilities & Transportation Commission April 6, 2021 Presentation on Community Benefits Indicators, filed December 1 2023, at 16.



**using energy equity plans.**

transparent, or efficient for the Commission or utilities to create and use their own system.

The proposed energy equity plan application would require utilities to apply EnviroScreen, Census, and other datasets to develop a relatively stable list of disproportionately impacted communities that could be reviewed by stakeholders and used in other proceedings. Under this approach, there may be minor, utility-specific variations in the types of communities that are identified, primarily based on common conditions. However, rules should accommodate fluctuations in this list over time for two major reasons.

First, EnviroScreen version updates could occur in the middle of litigating a proceeding or implementing an energy equity plan. To promote stability, it may make sense to apply the version of EnviroScreen that was in effect when an energy equity plan is approved to other applications filed while that energy equity plan applies. But because an energy equity plan could be in effect for three to four years and implicate multiple other applications, some flexibility could be warranted to enable new communities to be added.

Second, statutes allow for communities to self-identify under certain conditions. Without multiple EnviroScreen versions that use the same statutory language to compare, how much the list of disproportionately impacted communities could change between updates is unknown. That said, approximately 42% of Colorado residents live in disproportionately impacted communities pursuant to HB 23-1233.<sup>220</sup> This includes 2,344,014 Colorado residents in 1,571 census block groups, as well as 740 mobile home parks.<sup>221</sup> Given this significant population, it is unclear to what extent there may be additional embedded communities which are not currently included under law but may seek treatment as disproportionately impacted communities.

While other options may be identified in the course of rulemaking, it is possible that the 60/90-day notice process that is used to update customer energy programs could be used to augment the list of disproportionately impacted communities during an energy equity plan.

<sup>220</sup> These figures are based on a total of 3,532 census block groups and approximately 5,610,349 Colorado residents, drawn from the 2015-2019 American Community Survey data. U.S. Census Bureau. (2019). American Community Survey 5-Year Estimates, 2015-2019. Retrieved from the U.S. Census Bureau API: <https://www.census.gov/data/developers/data-sets/acs-5year.html>.

<sup>221</sup> To learn more about the updated definition visit <https://cdphe.colorado.gov/ej/learn>. Under the prior HB 21-1266 definition, 1,579 census block groups, encompassing roughly 2,398,348 Colorado residents, met the disproportionately impacted community criteria.

<p><b>The Director can support the education around and use of EnviroScreen in Commission proceedings and by Commission staff.</b></p>	<p>The EJ Program maintains detailed archives and technical support documents for EnviroScreen which appear to address stakeholders’ recommendations.<sup>222</sup> Staff recommends the agency maintain a close working relationship with the EJ Program and provide public information on EnviroScreen through the website, trainings, and other opportunities. This coordination likely does not require a rule change, but we encourage the Director to ensure that interagency coordination is prioritized and staffed appropriately.</p>
<p><b>The EnviroScreen tool will need ongoing support for the Commission to be able to use it in proceedings and processes.</b></p>	<p>Staff benefited greatly from the support of the EJ Program and the ability to use and ask questions about the EnviroScreen tool during this proceeding. The EJ Program has also offered support in the form of recommendations, templates, best practices, and informal guidance, on topics ranging from stakeholder engagement to environmental justice. Stakeholders repeatedly emphasized the need for state agencies to coordinate to reduce the burden on representatives from disproportionately impacted communities and to promote clarity and consistency in how disproportionately impacted communities are defined and engaged. We believe that the Commission and other state agencies will benefit from continued efforts by the Colorado General Assembly and CDPHE to resource and support the EJ Program to develop centralized tools and materials.</p>
<p><b>The Commission’s rules should enable flexibility for utilities to prioritize treatment of a disproportionately impacted community depending on the based on the nature of the impact or benefit, based on evidence.</b></p>	<p>Disproportionately impacted communities may need to be treated as a binary where protections from burdens or harms are being considered. For example, if a utility construction project will be located near and potentially affect a group of disproportionately impacted communities, it seems logical that the impacted communities should receive the same or similar protections (such as enhanced notice), regardless of the criteria that is used to classify the community as disproportionately impacted (income, race, language).</p> <p>On the other hand, disproportionately impacted communities may need to be prioritized or targeted when benefits are being distributed. For example, some utility programs or activities may be more relevant or beneficial to certain disproportionately impacted communities than others. An example could be prioritizing funding to provide energy weatherization services to residents of mobile home parks, or focusing efforts to engage disproportionately impacted communities that are adjacent to a construction project.</p> <p>Overall, staff recommends that the Commission’s rules provide flexibility for this information to be presented in proceedings and for decisions about prioritization and targeting to be made based on evidence. The statistical analysis to identify variations could be complex—for example, comparing overall residential customers to customers who live outside disproportionately impacted communities, within disproportionately impacted communities, or</p>

<sup>222</sup> See <https://cdphe.colorado.gov/enviroscreen> and corresponding Open Data and Github repositories.



within subsets or criteria of disproportionately impacted communities. Instead of setting requirements now, the rules should establish a framework which enables thoughtful analysis and ensures that parties in proceedings will have sufficient, granular data to evaluate and propose alternative forms of comparison for equity purposes.

## Impacts, Benefits, and Proportionate Access

This section focuses on two requirements about impacts and benefits associated with the legislation.

First, SB 21-272 requires that the Commission “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.”<sup>223</sup>

Second, SB 21-272 requires that “[w]hen 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.”<sup>224</sup>

## Stakeholder Perspectives and Recommendations

### “Impacts” should be considered “burdens.”

Stakeholders frequently contrasted “benefits” with “impacts,” suggesting that impacts can be thought of as burdens or potentially neutral changes.<sup>225</sup> Stakeholders stressed that benefits, however, should be offered without extracting anything from the community.<sup>226</sup>

### Stakeholders proposed a mix of impacts to be minimized and benefits to be prioritized, although some impacts and benefits were consistent across proceedings.

As described above, stakeholders identified several different use cases for the concept of disproportionately impacted communities, which could result in considering different benefits or burdens depending on the issue or industry. In comments and workshops, stakeholders suggested many potential benefits and burdens focused on electric and gas utilities including:<sup>227</sup>

<sup>223</sup> § 40-2-108(3)(b), C.R.S.

<sup>224</sup> § 40-2-108(3)(c)(II), C.R.S.

<sup>225</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 24.

<sup>226</sup> Equity Framework Workshops Notes, 9/20/2023 at 21.

<sup>227</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 39-44; Work Planning Workshop Notes, 11/14/2022 at 5; City of Boulder Comments, 6/13/2022 at 13-14; Colorado Natural Gas Comments 6/13/2022 at 9; EJ Coalition Comments, 6/13/2022 at 31-37.

- Bill impact, rate impact, and overall bill affordability
- Greenhouse gas emissions and climate change impacts
- Air quality impacts (*e.g.*, nitrogen oxides pollution) and pollution-related public health impacts
- 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
- Public awareness and education

Stakeholders frequently contrasted “benefits” with “impacts,” suggesting that impacts can be thought of as burdens or potentially neutral changes. Stakeholders stressed that benefits, however, should be offered without extracting anything from the community.

While providing a large list of potential benefits and burdens, stakeholders suggested that important criteria for creating successful metrics include that they should be measurable (even if measurement involves some qualitative or lived experience assessment)<sup>228</sup> and they should be created with community engagement, if not leadership.<sup>229</sup> Stakeholders raised questions about clarity and control that have similarities to the Commission’s guidance for how to develop performance incentive mechanisms.<sup>230</sup> However, they are also more expansive than the potential benefits that stakeholders identified should be proportionately accessible from retail customer programs, and they sometimes involve issues that Commission decisions can affect, but which the Commission does not regulate under law (such as air or water quality).

Given this variation, one approach that emerged in workshop discussions is the idea of having a limited number of standardized metrics that could be consistently reported and considered in certain proceedings, and allowing regulated utilities to develop additional, custom metrics based on stakeholder engagement.<sup>231</sup> This approach has similarities to the concept of community benefit indicators which are being developed to cover overarching concepts (bill impacts, program participation, reliability) in Washington and Oregon.<sup>232</sup>

Another approach that was raised for considering burdens was the concept of cumulative impacts analysis, which considers how a single agency decision may be part of a larger spectrum of impacts on a population which may experience disproportionate public and environmental health problems. Stakeholders generally commented that the Commission should engage with experts at other agencies

<sup>228</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 52.

<sup>229</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 50.

<sup>230</sup> *See, e.g.*, Proceeding No. 21A-0096E, Decision No. C22-0270, issued June 2, 2022, at ¶ 81; Black Hills Comments, 3/28/2024 at 2 (noting that utilities cannot force their customers to participate in programs).

<sup>231</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 50.

<sup>232</sup> *See generally* Impacts & Benefits Workshop Notes, 1/4/2024.

around key issues like air quality to better understand the impacts of utility proposals on disproportionately impacted communities.<sup>233</sup>

Stakeholders disagree somewhat over whether workforce training and other labor issues should be considered a “benefit” instead of a tool or activity.<sup>234</sup> However, comments often raised workforce issues as equity issues, and Laborers’ Local 720 explained that 60% of union members identify as racial or ethnic minorities, and 52% live in disproportionately impacted communities under the race criteria.<sup>235</sup>

### **There is significant agreement among what kinds of programs are “retail customer programs.”**

Stakeholders largely agree on the types of programs that constitute “retail customer programs”<sup>236</sup> but disagree around edge cases and how prescriptive to be in rule. Stakeholders generally agree that retail customer programs could include programs related to beneficial electrification, clean heat, demand-side management, renewable energy, and transportation electrification.<sup>237</sup> However, stakeholders sometimes diverge around programs for income-qualified customers, such as percentage of income payment plan (“PIPP”) programs or medical exemption programs, and programs related to bill payment. For example, EOC suggests both PIPP programs and installment payment plans should be considered retail customer programs.<sup>238</sup> In contrast, Public Service proposes the following flexible definition instead of a specific list:

- Voluntary retail opportunities, including incentives, rebates, and other offerings, that regulated utilities extend to individual retail utility customers
- Programs that enhance the customer experience, support clean energy goals, or enhance innovation<sup>239</sup>

Under Public Service’s approach, PIPP programs would not be retail customer programs because they help customers access basic utility services.<sup>240</sup> The City of Boulder disagrees with this proposal, stating both that affordability-related programs should be considered for purposes of SB 21-272 and that it would be administratively burdensome to evaluate every product and service against this definition.<sup>241</sup>

Stakeholders also opined on what it means for the Commission to engage disproportionately impacted communities when it “makes decisions relating to retail customer programs.” Public Service suggested that this could include a broad set of decisions covering Commission actions affecting retail customer programs that potentially reach or impact income-qualified customers or disproportionately impacted

<sup>233</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 25.

<sup>234</sup> EJ Coalition Comments, 6/13/2022 at 36-37; Impacts & Benefits Workshop Notes, 1/4/2024 at 24.

<sup>235</sup> Laborers’ Local 720 Comments, 6/13/2022 at 2.

<sup>236</sup> *But see* Colorado Natural Gas Comments, 6/13/2022 at 9 (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).

<sup>237</sup> Decision No. R24-0114-I at ¶¶ 12-13 and Table 1. This decision contains additional discussion of this issue and stakeholders’ differing positions.

<sup>238</sup> EOC Comments, 3/14/2024 at 4, 6-7.

<sup>239</sup> Public Service Comments, 3/14/2024 at 4-5.

<sup>240</sup> Public Service Comments, 3/14/2024 at 6.

<sup>241</sup> City of Boulder Comments, 3/28/2024 at 5-6.



communities.<sup>242</sup> EOC suggests these decisions should be ones that have a direct impact on the final decision in the case.<sup>243</sup> Finally, CEO recommends this provision refer to adjudications, and potentially rulemakings, but states that this will undoubtedly require additional resources and suggests that outreach led by utilities could fill the gap in the near term.<sup>244</sup>

**Stakeholders suggested several approaches for ensuring disproportionately impacted communities receive proportionate access to the benefits of retail customer programs, compared to non-disproportionately impacted communities.**

SB 21-272 states 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, including 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.<sup>245</sup>

While stakeholders initially suggested various definitions for benefits in the context of minimizing impacts and prioritizing benefits, comments became more targeted when specifically applied to decisions about retail customer programs. Decision No. R24-0114-I asked stakeholders to comment on which types of benefits the Commission should consider for proportionate access, including financial benefits, program benefits, and indirect benefits (*e.g.*, air quality).

First, stakeholders generally commented that having a specific budget set aside for income-qualified customers and disproportionately impacted communities is critical,<sup>246</sup> and this should be more than a guideline.<sup>247</sup> Various approaches for designing this budget were proposed, including based on the proportion of revenue contributed by income-qualified customers and disproportionately impacted communities, or based on the proportion of those customers as compared to customers who are not income-qualified or living in disproportionately impacted communities.<sup>248</sup> Public Service recommends that budgets should consider targeted levels of participation and anticipated demand, and should meet or exceed existing statutory requirements for budgets for income-qualified and/or disproportionately impacted community customers—they raise that more stringent or inconsistent requirements could limit innovation.<sup>249</sup>

<sup>242</sup> Public Service Comments, 3/14/2024 at 7.

<sup>243</sup> EOC Comments, 3/14/2024 at 7.

<sup>244</sup> CEO Comments, 4/9/2024 at 12-13.

<sup>245</sup> § 40-2-108(c)(II), C.R.S.

<sup>246</sup> City of Boulder Comments, 3/14/2024 at 5.

<sup>247</sup> EJ Coalition Comments, 6/13/2022 at 37.

<sup>248</sup> Decision No. R24-0114-I, at ¶ 23.

<sup>249</sup> Public Service Comments, 3/14/2024 at 12.

Specifically with regard to ensuring proportionate access, stakeholders noted there is likely no one perfect definition because of program variations.<sup>250</sup> The EJ Coalition recommends this be measured based on providing direct financial benefits, direct benefits based on the goals the program is designed to achieve, and improved public participation.<sup>251</sup> Black Hills Energy disagreed that participation rates should be a measure of program success, as customers experience market barriers that are beyond utilities' control.<sup>252</sup> EOC suggested that the long-term sustainability of benefits should be considered, and the City of Boulder and EOC both recommended that the impact of retail customer programs on energy burden is important—the City of Boulder recommended that reducing energy insecurity should be the primary goal of retail customer programs.<sup>253</sup> Stakeholders also expressed that access should be assessed based on progress made in implementing education and outreach programs and stakeholder feedback.<sup>254</sup> Some stakeholders further stated the importance of reviewing actual dollars, and not just planning budgets.<sup>255</sup> Throughout the proceeding, stakeholders shared perspectives that current practices around cost-effectiveness may need to be reevaluated, or at least not stringently applied, to broaden participation in programs for income-qualified customers and disproportionately impacted communities.<sup>256</sup>

Importantly, some stakeholders stated that proportionate access should involve looking at longer historic trends. For example, where revenues have been collected from all customers, benefits should be provided not only based on forward-looking equity but also based on prior years in which customers in disproportionately impacted communities were underserved.<sup>257</sup>

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**The process for developing rule changes and updated practices to implement SB 21-272 should integrate equity concerns with affordability concerns.**

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As was noted above, stakeholders generally encouraged the Commission to make connections between disproportionately impacted communities and income-qualified customers. As EOC states, integrating disproportionately impacted communities into income-qualified customer programs could increase efficiency across multiple proceedings, and would avoid duplicative program administration.<sup>258</sup> The City of Boulder recommends that equity be evaluated through the overall lens of energy insecurity, and suggests that if a customer's participation in an energy program does not reduce their energy insecurity, it does not achieve equity outcomes.<sup>259</sup> CEO adds that the Commission should attempt to reduce energy burden, energy insecurity, and energy poverty in disproportionately impacted communities to the extent

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<sup>250</sup> Public Service Comments, 3/14/2024 at 11; EOC Comments, 3/14/2024 at 2-3.

<sup>251</sup> EJ Coalition Comments, 3/14/2024 at 3.

<sup>252</sup> Black Hills Energy Comments, 3/28/2024 at 2.

<sup>253</sup> EOC Comments, 3/14/2024 at 5-6.

<sup>254</sup> EOC Comments, 3/14/2024 at 5-6; PSCo

<sup>255</sup> EJ Coalition Comments, 3/14/2024 at 4-6.

<sup>256</sup> Decision No. R24-0114-I, issued February 23, 2024, at fn. 49 (referencing testimony in Proceeding No. 21A-0625EG).

<sup>257</sup> Decision No. R24-0114-I, issued February 23, 2024, at fn. 49 (referencing testimony in Proceeding No. 21A-0625EG).

<sup>258</sup> EOC Comments, 6/13/2022 at 6.

<sup>259</sup> City of Boulder Comments, 3/14/2024 at 4-6.



possible.<sup>260</sup> Stakeholders also raised energy savings and bill savings, quantified in dollars, as potential benefits that could be considered.<sup>261</sup>

**Stakeholders presented different approaches for considering historical inequalities.**

SB 21-272 states that when promulgating rules, the Commission shall “consider how best to provide equity . . . and address historical inequalities.”<sup>262</sup> The legislative declaration for SB 21-272 also states that “[t]he purpose of this subsection (3) is to ensure that the Commission, in exercising its regulatory authority, will take account of and, where possible, help to correct these historical inequities,” such as “disproportionate burden[s] of adverse human health or environmental effects” and “systemic exclusion from environmental decision-making processes and enjoying fewer environmental benefits...”<sup>263</sup> Stakeholders presented multiple perspectives on what constitutes historical inequalities and how they should be assessed. Generally speaking, stakeholders raised that disproportionate burdens and fewer benefits could include long-term exposure to pollution from nearby fossil fuel plants, and challenges with accessing government decision-making processes. However, stakeholders variously suggested that the Commission should focus more specifically on inequalities based on its regulatory activities (e.g., equitable access to energy programs) or that it should focus more broadly on inequalities regardless of whether it had a role in their creation (e.g., addressing legacies of redlining in housing stock).<sup>264</sup>

**Staff Recommendations**

Recommendation	Explanation
<p><b>The Commission should clearly define in rule what qualifies as a “retail customer program,” with only some flexibility.</b></p>	<p>Stakeholders generally agree that retail customer programs could include programs related to beneficial electrification, clean heat, demand-side management, renewable energy, and transportation electrification. However, stakeholders sometimes diverge around programs for income-qualified customers, such as PIPP programs or medical exemption programs, and programs related to bill payment.</p> <p>For the purpose of implementing SB 21-272, Staff recommends retail customer programs be defined as opportunities that individual retail customers can voluntarily subscribe to that fall outside of the normal provision of energy services. This would include programs that offer monetary incentives, financing, and other offerings that regulated utilities may extend to retail utility customers. This would not include normal delivery of electricity or gas services, approved thresholds for energy reliability, or utility wildfire or weather mitigations.</p> <p>However, retail customer programs should not include programs <i>solely</i> for income-qualified customers. While barriers to entry should be reduced for</p>

<sup>260</sup> CEO Comments, 6/13/2022 at 23-24.

<sup>261</sup> See, e.g., Colorado Natural Gas Comments, 6/13/2022 at 9.

<sup>262</sup> § 40-2-108(3)(b), C.R.S.

<sup>263</sup> § 40-2-108(3)(a)(I)-(II), C.R.S.

<sup>264</sup> Guiding Principles Workshops Notes, 9/20/2022 at 38.



	<p>those programs, prioritization based on income and vulnerability continues to make sense for dedicated programs. Moreover, because income-qualified program offerings should also be addressed within energy equity plans, it may not be necessary to make that distinction.</p> <p>Initially, Staff suggests drawing from the definition set forth by Public Service in its comments, but providing examples of categories such as clean heat, demand-side management, etc. It could be overly restrictive to list all programs in rules; at the same time, a presumption that certain types of programs are retail customer programs would provide clarity and allow for more precision to be incorporated in energy equity plan applications.</p>
<p><b>The Commission’s new rules for utility energy equity plans should require utilities to address impacts and benefits, proportionate access, and common points of comparison for equity impact proceedings.</b></p>	<p>Staff introduces the concept of a multiyear energy equity plan application in this report. That proceeding would create an umbrella framework for electric and gas utilities to apply to equity impact proceedings that are filed during the multiyear period. This could include several concepts that capture how the utility is considering and distributing the impacts and benefits of its energy system investments and programs to its customers. The creation of a utility’s energy equity plan will create a venue for utilities to share the impacts of various types of investments, and compare investments to determine how different investments impact procedural, distributional, recognitional, and restorative equity.</p> <p>One function of the energy equity plan would be to address proportionate access to the benefits of retail customer programs. This could be incorporated in the plan by requiring utilities to identify which retail customer programs are available to disproportionately impacted communities and income-qualified customers; the targets or goals of those programs (e.g., bill savings, energy savings); and any minimum budgets or standards that are required by statute or rule. The energy equity plan could thus provide a longer-term vision for which programs may be available, what outcomes they are intended to achieve, and whether some may be better candidates than others for investments above the minimum because of their impact or the audience they serve.</p> <p>Another function of the energy equity plan would be to consider impacts and benefits to disproportionately impacted communities more broadly. As was suggested by stakeholder comments, an impact from a rate case could involve an increase to bills, while an impact from a certificate of public convenience and necessity could involve an increase to localized air emissions. While some of these more specific variations may need to be addressed directly in electric or gas rules for individual proceedings, an energy equity plan could be a venue to create common points of comparison related to the impact of an activity proposed by a utility on one or more disproportionately impacted communities (e.g., to cost, reliability, greenhouse gas emissions, local workforce, etc.). An energy equity plan should be used both to identify which utility actions are most critical to</p>



	<p>improve equity-based on stakeholder input—and in which proceedings those actions may be addressed.</p>
<p><b>The Commission’s equity rules will need to consider appropriate privacy protections.</b></p>	<p>Utilities have raised issues of <i>data minimization</i>, such as whether it is appropriate for them to collect and maintain customer income or demographic information.<sup>265</sup> On the other hand, it may be challenging to evaluate equity comprehensively without information about program participation. While utilities have repeatedly stated that they do not collect household income, stakeholders suggested that program evaluation will require, at minimum, asking customers to voluntarily disclose demographic and other information.<sup>266</sup></p> <p>Beginning to analyze data geospatially—particularly at the census block group level, which can be granular—may dramatically increase the volume of data collection and the challenge of statistical analysis to answer questions such as whether disproportionately impacted communities generally or a subset specifically are differently impacted than communities that do not meet those criteria. Bringing in complex statistical analysis may ironically make it more challenging for members of the public, including representatives of disproportionately impacted communities, to engage on these issues.</p> <p>Public Service states it is applying existing Commission data privacy rules when it releases information about numbers of customers in disproportionately impacted communities, although it notes that this is a potentially labor-intensive, manual process.<sup>267</sup> Given the size of a census block group or a zip code, practices like the “15/15” rule<sup>268</sup> may need to be reviewed to ensure they allow for robust equity analysis. Public Service suggested the Commission may be best-positioned to aggregate utility program data and normalize it for privacy reasons, as part of a clearinghouse of maps and metrics.<sup>269</sup> Staff does not have sufficient information at this time to provide recommendations, but data collection, management, and protection rules and policies may need to evolve to facilitate distributional equity analysis.</p>
<p><b>In the course of implementing the Agency Equity Framework, the agency can identify and track historical inequalities.</b></p>	<p>The Commission is still a long way from fully understanding and quantifying the historical inequities present across the industries it regulates. The agency took steps to understand historical trends and inequities, such as redlining, when staff worked to set industry baselines in the Agency Equity Framework. The Director will be working with each industry team to</p>

<sup>265</sup> Black Hills Energy Comments, 3/28/2024 at 2. Public Service suggests that utilities can only collect customers’ personal information as necessary to provide regulated utility services. Public Service Comments, 3/14/2024 at 10.

<sup>266</sup> CEO Comments, 4/9/2024 at 14-15.

<sup>267</sup> Public Service Comments, 1/25/2023 at 2; Public Service Comments, 3/14/2024 at 7-9.

<sup>268</sup> Rules 3033(b) and 4033(b).

<sup>269</sup> Public Service Comments, 7/8/2022 at 16-17.



	identify relevant inequities—including through data analysis and stakeholder outreach—and bring forward options to mitigate them.
<b>The General Assembly may wish to consider whether to align cost-effectiveness tests and budget floors to promote effective braiding of funding.</b>	In Decision No. R24-0114-I, Hearing Commissioner Gilman listed numerous statutory requirements for potential retail customer programs, which require utilities to achieve certain levels of participation, budgets, or targets like energy savings. Some of these programs incorporate different cost-effectiveness tests, and stakeholders shared varying perspectives on whether those tests would support or conflict with equity requirements. Variations between budget set-asides and cost-effectiveness requirements may result in challenges in reconciling or prioritizing across programs, or building approaches for enrolling customers into programs that might otherwise build on each other (such as weatherization to community solar). Because many of these requirements are set in statute, the Colorado General Assembly would need to weigh in on opportunities to coordinate utility energy programs.

## Equity in Industries Regulated by the Commission

This section relates to the requirement that the Commission “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.”<sup>270</sup> Because the legislation refers to “all” of the Commission’s work, staff have assumed that the legislation could apply to every industry regulated by the Commission. In some cases, this means program areas run by the Commission, and not just litigated cases or rulemakings. Accordingly, this section summarizes stakeholder comments on how equity could specifically look in other industries.

### Stakeholder Perspectives and Recommendations

**Energy.** Stakeholders raised several concepts for defining equity specific to individual Commission proceedings or electric and gas utility actions:

- **Affordable, Decarbonized Energy.** One of the most consistent needs that stakeholders expressed throughout this proceeding was the need for affordable, clean energy in the state. Versions of this sentiment came up in almost every meeting, and these recommendations came from both community members and regulatory experts. While proceeding-specific recommendations are below, broad recommendations to improve affordability include:
  - Asking utilities and the PUC provide tools to inform customers price changes and options for energy or bill programs to reduce energy costs.<sup>271</sup> Similarly, requiring utilities to use

<sup>270</sup> § 40-2-108(3)(b), C.R.S.

<sup>271</sup> Impacts and Benefits Workshop Notes, 12/7/23 at 40.

“normal” modes of communication, like the evening news or the radio, to explain why energy prices change.

- Using rate design to improve equitable outcomes.<sup>272</sup>
  - Improving overall affordability of service to reduce energy burden.<sup>273</sup>
  - Stopping siting fossil fuels in disproportionately impacted communities.<sup>274</sup>
  - Recognizing that lower income communities often contribute the least to energy demand but often bear the brunt of the negative impacts of fossil fuel plants because of siting decisions.<sup>275</sup>
- **Beneficial Electrification.** Stakeholders suggested prioritizing building electrification rebates and programs in disproportionately impacted communities because of impacts of gas appliances on indoor air quality.<sup>276</sup> Stakeholders also suggested that heat pumps could be prioritized to disproportionately impacted communities where residents lack air conditioning.<sup>277</sup> However, stakeholders also stated that income-qualified customers are less likely to electrify and many lack resources to do so.<sup>278</sup>
  - **Certificates of Public Convenience and Necessity (CPCN).** CPCNs were considered significant for equity because siting of fossil fuel resources can impact communities.<sup>279</sup> A stakeholder suggested that the effects of construction on disproportionately impacted communities should be considered in CPCN applications.<sup>280</sup>
  - **Distribution System Plans.** Stakeholders suggested that the utility distribution system planning process incorporate geographic considerations of distributed energy resource investments in disproportionately impacted communities, and layers on hosting capacity maps for those communities and associated reliability and other metrics.<sup>281</sup> Stakeholders noted that disparities in grid reliability could show environmental racism and inequitable access.<sup>282</sup> SB 24-218 recently required load hosting capacity for disproportionately impacted communities to specifically be analyzed in distribution system plans.<sup>283</sup>

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<sup>272</sup> RMI/WRA Comments, 6/13/2022 at 19; EOC Comments, 6/13/2022 at 21.

<sup>273</sup> EJ Coalition Comments, 6/13/2022 at 38.

<sup>274</sup> Case Tiering Workshop Notes, 10/26/2023 at 9.

<sup>275</sup> Impacts and Benefits Workshop Notes, 12/7/2023 at 40.

<sup>276</sup> CEO Comments, 6/13/2022 at 24.

<sup>277</sup> CEO Comments, 6/13/2022 at 25.

<sup>278</sup> EOC Comments, 6/13/2022 at 12.

<sup>279</sup> Case Tiering Workshop Notes, 10/26/2023 at 9.

<sup>280</sup> EJ Coalition Comments, 6/13/2022 at 14.

<sup>281</sup> Public Service Comments, 7/8/2022 at 11; CEO Comments, 4/9/2024 at 27.

<sup>282</sup> Case Tiering Workshop Notes, 10/26/2023 at 10.

<sup>283</sup> § 40-2-132.5(4)(c), C.R.S.

- **Electric Resource Plans (ERPs).** ERPs were considered significant for equity because they are where decisions are made about particular grid resources that will show up in rates for years to come.<sup>284</sup> Stakeholders raised several equity issues regarding ERPs. First, several stakeholders explicitly asked for the immediate shut-down of Pueblo Unit 3 because of its impact on air quality in the Pueblo community.<sup>285</sup> They characterized continuing to run fossil fuel plants as exposing customers to risk instead of shareholders.<sup>286</sup> Second, stakeholders seek more transparency in ERP modeling, including modeling assumptions that can be clearly understood by the public.<sup>287</sup> Third, CEO recommended that there should be education, discussion of alternatives, and more outreach, such as public comment hearings, when new fossil-fueled resources are proposed for disproportionately impacted communities.<sup>288</sup>
- **Reliability.** Reliability and resilience are addressed in multiple Commission proceedings. Stakeholders raised several issues related to safety, reliability, and resilience that should be implemented equitably, including weather preparedness, wildfire preparations, vegetation management, and equipment maintenance.<sup>289</sup> Stakeholders raised issues such as the legacy of redlining and age of neighborhoods as being factors to look at in whether reliability is distributed equitably across utility customers.<sup>290</sup>
- **Renewable Energy Standard Plans.** Among stakeholder suggestions to increase equity for renewable energy programs include streamlining paperwork requirements for enrolling income-qualified subscribers in community solar programs<sup>291</sup>; changing “last customer pays” approaches to interconnection as early adopters of solar are more likely to be wealthy customers;<sup>292</sup> and creating more grant-based affordable solar programs.<sup>293</sup>

**Telecommunications.** Comments specific to the telecommunications industry generally focused on regulation of inmate calling services providers pursuant to HB 21-1201. The Prison Policy Initiative (“PPI”) commented that incarcerated people are not included in Census data and should be considered disproportionately impacted communities to which specific outreach is conducted. PPI stated that certain census tracts that meet or exceed the poverty thresholds in SB 21-272 have some of the highest incarceration rates in the state and that incarceration is a public health risk. PPI further urged the

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<sup>284</sup> Case Tiering Workshop Notes, 10/26/2023 at 9.

<sup>285</sup> Equity Framework Workshops Notes, 9/20/2023 at 41.

<sup>286</sup> Equity Framework Workshops Notes, 9/20/2023 at 36.

<sup>287</sup> Public Comment, 10/18/2022 at 2-3.

<sup>288</sup> CEO Comments, 4/9/2024 at 28.

<sup>289</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 39.

<sup>290</sup> Impacts & Benefits Workshop Notes, 1/4/2024 at 42.

<sup>291</sup> EOC Comments, 6/13/2022 at 21.

<sup>292</sup> Public Comment, 5/21/2022.

<sup>293</sup> Case Tiering Workshop Notes, 10/26/2023 at 57.



Commission to open rulemakings to implement HB 21-1201 and to consider regulating video calling and lower caps on intrastate calls.<sup>294</sup>

**Transportation.** While few comments were received on equity in transportation regulation, stakeholder suggested that among the impacts and benefits to address for that industry include its impacts on air pollution; equitable access to electric vehicles; and racial and socioeconomic disparities in towing company practices.<sup>295</sup>

**Gas Pipeline Safety.** While few comments were received on equity in gas pipeline safety regulation, stakeholders suggested that among the impacts and benefits to address for that industry include health and safety risks to surrounding communities. Advanced leak detection and increased inspection frequency of gas pipelines in disproportionately impacted communities were suggested as actions to increase equitable health and safety.<sup>296</sup> Members of the Equity Advisory Focus Group also recommended that as the gas pipeline safety team develops public-facing materials simplify and streamline its messaging to help people understand the most critical issues they need to understand.<sup>297</sup>

**Staff Recommendations**

Recommendation	Explanation
<p><b>The Commission should prioritize changes to the Practice and Procedure rules, as well as the Electric and Gas rules.</b></p>	<p>The recommendations set forth here would require changes to overall procedural rules on topics like intervention and the creation of a category of equity impact cases, which would be best suited for placement in the Commission’s Practice and Procedure Rules. However, the creation of energy equity plan applications specific to electric and gas utilities would likely require concurrent modification of the Electric and Gas Rules. While this presents the prospect of an expansive rulemaking, we believe that careful planning can be used to present the bigger picture but stage areas of focus over time.</p> <p>While most stakeholders’ comments focused on implementation for electric and gas utilities, the Practice and Procedure rules impact every industry regulated by the Commission. Staff working on this effort plans to coordinate closely with staff advising the Commission on non-energy industries to ensure there is clarity about the impacts. As the Agency Equity Framework is implemented and results in more data about equity and disproportionately impacted communities, and as the Commission gains more experience with Electric and Gas Rules modifications, it may make sense to propose changes specific to other industries in the future rulemakings. Ultimately, this process is likely to be iterative and may result in multiple rulemakings conducted over years.</p>

<sup>294</sup> Prison Policy Initiative Comments, 6/13/2022 at 3-4, 6, 10-12.

<sup>295</sup> EJ Coalition Comments, 6/13/2022 at 31-32.

<sup>296</sup> EJ Coalition Comments, 6/13/2022 at 33-34.

<sup>297</sup> Equity Advisory Focus Group discussion, June 2024.



<p><b>The Commission should identify how its existing Electric and Gas Rules implicate consideration of disproportionately impacted communities.</b></p>	<p>During the time the Commission has been working to implement the requirements of SB 21-272, the Colorado General Assembly has passed numerous mandates requiring consideration of disproportionately impacted communities in certain contexts. This has created a scatter shot of requirements for utilities, intervening parties, and the Commission to address equity across different energy-related proceedings. However, these considerations are often siloed between proceedings and may not always be coordinated. In the course of making rules, the Commission should assess both legislation beyond SB 21-272, and also existing references to disproportionately impacted communities in recently promulgated rules, to promote clarity and consistency.</p>
<p><b>The Director should use the Agency Equity Framework to build understanding of how equity could apply to other industries.</b></p>	<p>As the Commission’s updates to the rules take effect, the Director should work with the agency’s communications and Consumer Affairs teams to determine whether the new rules are having their intended effect. Specifically, we recommend the Director oversee improvements to data collection and analysis, stakeholder engagement related to non-energy industries, and other interventions as necessary to analyze how the rules are impacting equitable outcomes across regulated industries.</p>

**Next Steps for the Commission**

The implementation of SB 21-272 represents a watershed moment for the Commission. As statutes have changed, the agency has grown from keeping costs low and keeping power safe and reliable, to increasingly incorporating environmental and social justice concerns in its practices, procedures, and decision-making.

If Hearing Commissioner Gilman agrees with staff’s recommendations put forth in this report, we are prepared to begin bringing forward for Commission consideration a Notice of Proposed Rulemaking in the coming months, drawing from the significant input presented in this proceeding, coordinated where possible with work on affordability and income-qualified programs that is currently happening in other venues. If the Commission agrees to commence a formal rulemaking based on staff’s recommendations, stakeholders will have the opportunity to participate in the rulemaking recommend revisions to proposed rules. Concurrently, we encourage the Director to continue moving forward with the Agency Equity Framework and her continued efforts to improve agency policies, procedures, training, and communications. We also encourage other stakeholders—such as utilities, state agencies, and the Colorado General Assembly—to reflect on the opportunities they have to improve outreach, engagement, and equity.

This proceeding and the expected follow-on rulemaking constitute one initial one step in the agency’s endeavor to better incorporate equity into its practices, procedures, and decision-making. Staff expects that the Commission will continue learning about how to provide equity through its work, and will make ongoing improvements to rules and processes to reflect those learning. Staff reiterates their thanks for stakeholders’ dedicated participation in this proceeding, and the diversity of interests that helped move these efforts forward.



## Appendix A: Timeline of Workshops and Activities in Proceeding No. 22M-0171ALL

The full work plan can be viewed at [puc.colorado.gov/equity](https://puc.colorado.gov/equity).

Activity	Date	Purpose
Proceeding Information Meetings	6/1/2022 6/7/2022	These meetings overviewed Proceeding No. 22M-0171ALL and options to participate.
Work Planning Workshops	10/18/2022 11/3/2022	These meetings discussed priority activities and topics for additional exploration in the proceeding.
EnviroScreen Workshop	1/26/2023	Staff from other state agencies demonstrated the EnviroScreen mapping tool and provided insights on how they use mapping tools and the term disproportionately impacted community.
Equity Framework Workshops	August 2023	These four meetings sought stakeholder feedback on guiding principles for the Commission's Equity Framework.
Proceeding Tiering Workshop	10/17/2023	Discussions focused on options for tiering or categorizing proceedings to focus distributional and procedural equity enhancements on those with the greatest likelihood of impact.
Impacts and Benefits Workshop	12/7/2023	Attendees brainstormed options to define impacts and benefits in different types of Commission proceedings.
Meaningful Participation and Engagement Workshop	1/31/2024	Presenters from state agencies and utilities discussed how they are conducting education and outreach, and how it informs their work.
Commissioners' Information Meeting on Community Engagement	3/6/2024	The Commissioners heard from local, state, and national experts about how their agencies and teams conduct meaningful outreach.
Office Hours	4/24/2024	Staff held office hours to provide a brief presentation on updates and take questions from attendees.
Program Design for Income-Qualified Customers and Disproportionately Impacted Communities Workshop	5/9/2024	Presenters provided examples of opportunities to incorporate human-centered design into customer programs.

## Appendix B: Lessons Learned for Agency Outreach and Engagement

This section summarizes staff's efforts related to communications, education, outreach, and engagement for SB 21-272 implementation through Proceeding No. 22M-0171ALL. It addresses relevant events and includes information about attendance numbers, attendee surveys, and lessons learned. At times, engagement conducted by other teams or related to other industries is discussed where it relates to exploring best practices. This section also includes staff's self-assessment and addresses internal and external barriers expanding opportunities for procedural equity. This is an area the Commission has some flexibility to improve its practices without requiring rules changes.

### a. Core Team

Work for this proceeding was implemented by a core project team of Kelly Crandall and Jessie Ciulla from the Commission's Advisory Staff and Holly Bise from Telecommunications Staff. The staff team supported Hearing Commissioner Gilman in developing objectives for the proceeding and managed most of the logistics for events, including agenda development, content development, and marketing. Katie O'Donnell (DORA) and Gail Connors (retired) provided event support as needed, such as for meeting facilitation. SB 21-272 work was also supported by numerous volunteers throughout the agency, such as staff who aided with translation, geospatial analysis, policy research, and meeting facilitation. At times, the agency has been able to work with student interns who are compensated through other mechanisms. There are no fully dedicated staff to SB 21-272 implementation, and because of this, the communications plan developed somewhat iteratively and organically as the assigned staff tried new approaches.

### b. Communications Plan and Strategy

By Decision No. C22-0239, the Commission set direction for Proceeding No. 22M-0171ALL that guides staff's overall communications plan and strategy. First, the Commission set an objective that Proceeding No. 22M-0171ALL would help it to understand its "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" (§ 38). More specifically, the Commission directed staff to schedule "workshops, informational meetings, and other forms of engagement as necessary to complete the objectives of" the proceeding; to "[i]ndicate steps taken to engage stakeholders from disproportionately impacted communities, including areas and communities identified for engagement"; and to create a webpage and/or plain language materials to make it easier for the public to follow this work (§ 41).

To prioritize communications and outreach activities that were appropriate for SB 21-272 implementation, staff took as a starting point the Commission's direction and the engagement recommendations in Section 5 of the Task Force Report and corresponding informational materials developed on these recommendations by the EJ Program. Extensive stakeholder comments related to communications, education, outreach, engagement, and accessibility, were also used to help staff prioritize efforts. Staff also considered what was currently doable for the agency given existing staff resources, budget, and State of Colorado and DORA policies and procedures. Staff is extremely appreciative to CDPHE EJ Program and Climate Change Unit for their assistance, as we were able to draw

on their recommendations for checklists and workflows to help create standard internal tasks and timelines for meetings.

**Key Communications Activities.** Staff increased outward-facing communications for SB 21-272 work through the following avenues:

**Capsule Website.** Staff created a dedicated capsule website on SB 21-272:

[puc.colorado.gov/equity](http://puc.colorado.gov/equity). The webpage includes key implementation documents, upcoming events, and information about how to participate, including a direct link to a Google Form for public comments. The webpage was updated as events were changed or canceled.

**Newsletter.** Staff sometimes provided short updates on upcoming events in the PUC's monthly newsletter, which is delivered through GovDelivery and reaches approximately 4,000 individuals.

**Email List.** Staff maintained a separate email list of individuals requesting updates about SB 21-272, which was used to send out workshop announcements. The email list includes approximately 390 individuals, with some likely overlap with the GovDelivery list.

**Cross-Marketing.** Staff cross-marketed events like workshops with other state agencies, in particular, CDPHE, CEO, and UCA, where possible.

**Progress Reports.** Staff produced progress reports every other month which provided internal updates and event attendance information. These were posted on the equity webpage.

**Commission Meetings.** Staff presented approximately every other month at Commissioner Weekly Meetings to provide updates on SB 21-272 implementation and to ensure the Commissioners and the public were kept aware of upcoming events. Recordings were added to the equity webpage.

While not necessarily a best practice, due to limited staff resources, most of the outreach and communications related to SB 21-272 were conducted by email. Staff created a dedicated email address, [puc\\_sb272equity@state.co.us](mailto:puc_sb272equity@state.co.us), for correspondence.

**Key Outreach and Engagement Activities.** Staff developed a new, robust approach to outreach and engagement that operated on multiple tracks at once for SB 21-272 work. These tracks include (1) staff- and Commissioner-led activities, (2) presentations to State of Colorado boards, (3) participation in activities hosted by other stakeholders, such as local governments and community-based organizations, and (4) forming an Equity Advisory Focus Group.

**Commissioner- and Staff-Led Activities.** [Appendix A](#) listed the key activities led by Commissioners or agency staff in the course of Proceeding 22M-0171ALL. All notes and materials can be found at [puc.colorado.gov/equity](http://puc.colorado.gov/equity). These were meetings the Commission hosted or co-hosted that could come in a variety of formats. These included informational meetings with Q&A sessions; formal Commissioner-led workshops; staff-led workshops with education, brainstorming, and speakers; and community meetings designed to hear extensive feedback in local areas. Written comments were also sought from stakeholders to supplement these activities.



**Presentations to State of Colorado Boards.** Staff presented to the Environmental Justice Advisory Board facilitated by CDPHE and the Utility Consumers’ Board of the Utility Consumer Advocate. These more formal venues are open to the public and provided a forum for staff to speak with stakeholders who are considered leaders in their fields and communities, but where some members also had experience with the Commission.

**Participation in Stakeholder Activities.** Staff attended activities hosted by other agencies or entities upon request. For example, agency staff attended the GHG Roadmap in-person sessions hosted by the Colorado Energy Office with other agencies, to hear local energy-related concerns directly. Staff also presented to other entities upon request, such as the Energy Subcommittee of the City and County of Denver’s Sustainability Advisory Council and the Colorado Solar and Storage Association conference.

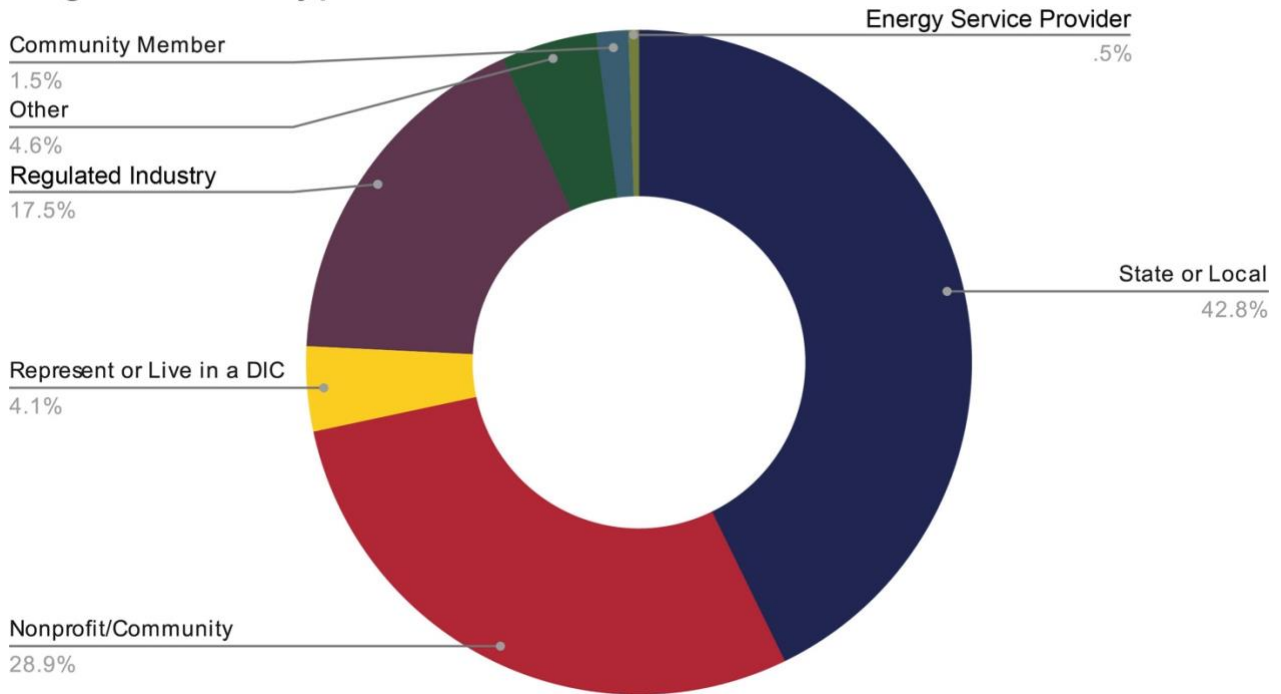
**c. Outreach Lessons Learned**

This section provides Staff’s assessment of lessons learned regarding outreach, drawing on feedback from stakeholders and voluntary information that was provided by participants as part of event registration and attendee surveys.

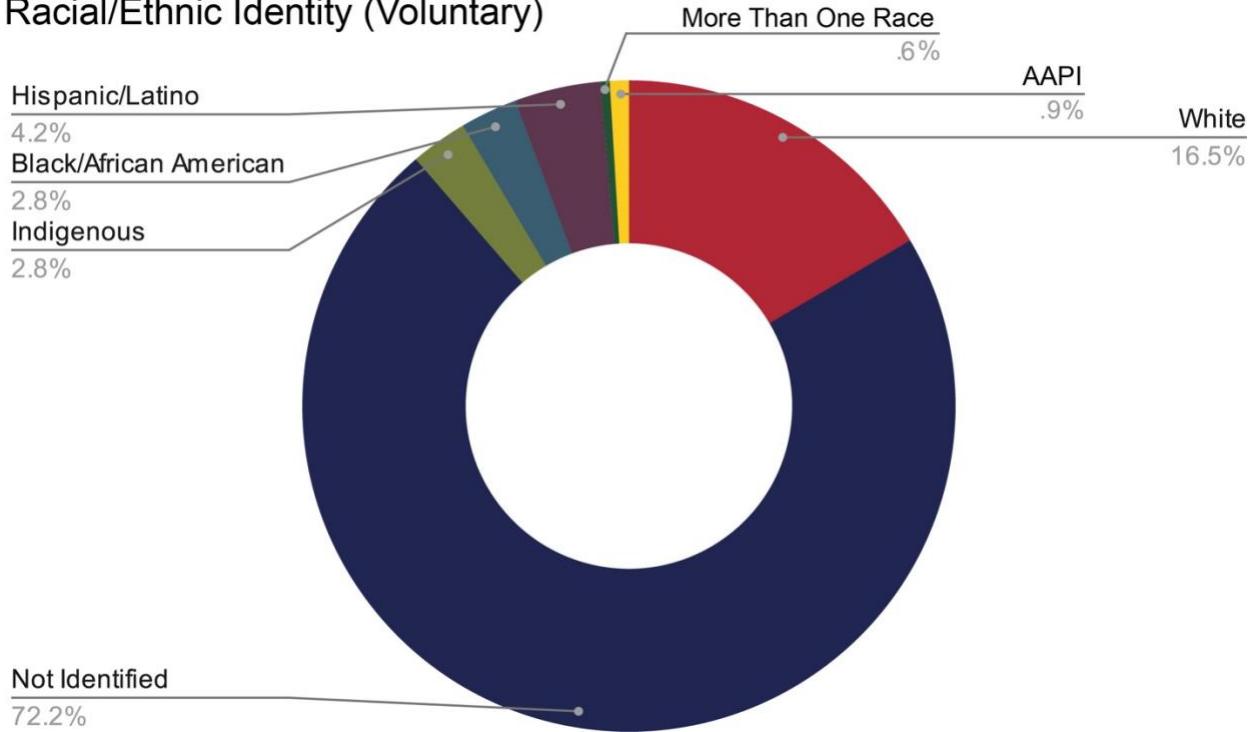
**i. Lessons Learned**

Overall, staff believes that significant progress was made in building the Commission’s outreach capabilities and learnings through the SB 21-272 process. The following figures break down overall participation by organization type and demographics.

**Organization Type**



### Racial/Ethnic Identity (Voluntary)



Staff were pleased with these outcomes:

- We saw an increase in sign-ups for our email list, which started with less than 100 registrants based on the original comments filed in the proceeding, and grew to approximately 400 registrants. One of the major activities that we think increased registrations was cross-marketing with other entities. We particularly noticed uptakes in event registrations and email registrations when our events were shared by the CDPHE EJ Program and by GreenLatinos.
- While few attendees responded to surveys after meetings, those who did provided largely positive feedback. For example, survey respondents indicated that we provided clear explanations of the issues being discussed and they were engaged in the subject, but that we did not always leave enough time for breakouts and discussion. Where we did get feedback, we used the surveys on an ongoing basis to tweak our agendas. We felt that overall, we designed more structured and participatory events and received more targeted feedback than prior experiences at the agency.
- We received generally positive feedback about the educational content we provided about how the Commission works, including topics like agency organization, the flow from pre-rulemaking to rulemaking to adjudication, and the industries regulated.
- We improved meeting logistics throughout the process and developed more “off the shelf” materials that other staff could use in the future. This includes clarifying appropriate practices for working with interpreters; creating PUC 101 slides; establishing clear tasks and timelines for save the dates and registrations, and so forth.
- Through the process, we felt that we continued to meet new people and new organizations that we had not previously interacted with in prior proceedings, including representatives from both



urban and rural parts of Colorado, and organizations connected to disproportionately impacted communities.

While it occurred in the context of a different proceeding on modifying the Commission's rules for gas utilities (Proceeding No. 21R-0449G), we believe one of the more fruitful activities was partnering with other entities, such as local governments and CBOs. We partnered with the City and County of Denver to reach a larger audience in the Montbello community and to provide bilingual content, food, and other amenities, including gift cards. Through this process, we were able to collect comments about community perceptions of gas and electrification, as well as to hear other energy-related priorities.

Going forward, we believe the agency has work to do on these areas:

- One of the biggest areas we could continue to work on is developing plain-language materials. We found it very challenging to break down highly technical concepts (which often have a legal component) into more digestible components. This challenge was increased because as our outreach expanded, we worked with stakeholders who had extremely varied familiarity with Commission processes and energy issues. In the future, we might attempt to structure workshops for more targeted audiences, some focused on overarching issues and others more specific to regulatory nuances and rules language.
- We struggled to build in timing to provide more upfront notice and plain language, multilingual materials. Staff working on this project had numerous other statutory deadlines to meet for specific proceedings in the course of this work. Similarly, keeping momentum was challenging—we are concerned that perhaps stakeholders have fallen off during this process as we wrapped up or canceled events and went “behind the curtain” to draft the report and rules. Once the agency has access to more communications staff, we believe we can institute better processes and timelines to keep processes moving along.
- In this proceeding, we primarily hosted workshops, rather than going to the community as recommended by stakeholders. We did at times present to state or local boards or commissions, or interested organizations. We think we could enhance pre-rulemaking more generally by having a broader communications approach in which staff are engaging with outside organizations and sharing stakeholder perspectives to relevant agency teams.

The next section provides more context for some of these lessons learned.

## ii. Challenges and Opportunities for Improvement

In the course of implementing SB 21-272, staff encountered a number of challenges which present opportunities for improvement both at the agency and the State of Colorado more broadly.

**Staffing.** A persistent lack of staff resources has been the most significant challenge to implementing SB 21-272 effectively. When SB 21-272 was first adopted, the agency did not attach a fiscal note to its implementation, and DORA Operations rejected efforts to hire an SB 21-272 project manager out of concerns about siloing equity work. Additionally, the Commission has only ever had one communications and outreach team member at a time, with episodes of turnover in that single position during the pendency of this effort, which led to the Commission's advisory staff taking a far more significant role in



outreach and engagement than makes sense for that role under normal conditions. The lack of a dedicated team for project management, outreach, and internal coordination to create and normalize new practices hampered implementation work for the first two years the legislation was in effect. While agency staff also attempted to backfill this work through internships, delays in approvals from the DORA human resources team also limited this opportunity as the agency is challenged to act within students' semester cycles.

Fortunately, team leads received offers of volunteer assistance from agency staff with valuable skills. This includes staff from the research and emerging issues team (statistical analysis and policy research), administration (policy research and process development), gas pipeline safety (spatial analysis), and systems enhancement (IT liaison support). This increased cross-functional teaming has given staff the opportunity to cross-train on topics, learn new skills like facilitation, and work with new people, which they have indicated they find rewarding.

**Caseload.** Unfortunately, this work was also occurring during one of the most significant caseloads in the Commission's history. SB 21-272 did not include a statutory deadline for implementing rules. While this allowed the agency to implement the legislation in a way that staff believes is more authentic, and to learn from processes like the Task Force, staff often had to refocus on adjudications and rulemakings with statutorily required timelines over SB 21-272 work.

**Policies and Procedures.** The agency is subject to policies and procedures implemented by the State of Colorado, DORA, and the Department of Personnel & Administration (DPA), among other agencies. Certain gaps exist, such as lack of clarity around whether the agency can provide participation incentives or childcare under DORA's Official Functions Policy which addresses food and venue rentals. Additionally, there are significant limitations on when and what kinds of food can be provided to the public at meetings. While staff have participated in meetings where regulated entities provided food and other services, Staff does not believe that it is appropriate for them to regularly fund amenities at events that are intended to be agency-led.

**Funding and Budgeting.** Going into the SB 21-272 process, staff did not have any baseline information for budgeting for fiscal years around interpretation services, food, and venue rental. Throughout the SB 21-272 process, we have begun to collect these benchmarks, which will be beneficial as the agency engages in more proactive communications planning.

**Consulting and Procurement.** Staff encountered several unexpected barriers in the process of seeking expert support for SB 21-272 implementation. For example, staff proposed in fall 2021 to hire both a local equity expert to facilitate an internal working group process along with an energy equity subject matter expert. The request for a local equity expert was rejected by DORA management for unclear reasons. Additionally, the process of hiring the Energy Equity Project took 18 months and required additional checkpoints from the DORA human resources team and protracted term negotiations between the State and the University of Michigan. These unexpected delays made it challenging to lay out a formal work plan for the process.

**Technology and Tools.** Staff encountered technological limitations in the course of SB 21-272 implementation. For example, the agency is in the process of undergoing a major systems upgrade. This



will result in migrating a number of separate software systems and databases, such as the Commission's E-Filings System for electronic records, to a new integrated Hyland system as legacy vendors no longer offer system support. While the Hyland system is expected to make data analysis and customer communication easier, Staff ran into problems using existing systems, such as GovDelivery and legacy databases, in ways that supported this effort.

**Intra-agency Coordination.** SB 21-272 represented a new type of project that presented several challenges because of the agency's siloed structure, which is necessary for litigation and to effectuate the statutorily created separation of functions between the Director and the appointed Commissioners. Two challenges were particularly prominent. First, due to lack of certainty around what issues might arise in energy litigations, it was initially challenging to share information between the Commission's advisory and trial staff sections. Second, because the Director manages the agency's day-to-day operations and the Commission makes policy and legal decisions, and SB 21-272 impacted both, it was difficult to determine who should take the lead or how to collaborate (and how to explain the problem to stakeholders). While the tasks that fell to each area of responsibility became clearer over time, there were few precedents for this type of work initially. Despite these challenges, the agency made significant progress in cross-team collaboration. For example, Director White formed a steering committee, which included several PUC deputy directors, Commissioner Gilman, and Commission counsel from the Attorney General's Office.



## Appendix C: Energy Equity Plan

Staff proposes the Commission issue rules requiring electric and gas utilities to file energy equity plan (EEP) applications establishing a multi-year framework to measure and increase affordability, and distribute benefits more equitably, to their customers.

While historically, utility regulation strove to treat customers fairly based on the cost to provide them with energy services, increasing energy equity will involve acknowledging that customers start from different places. Economic disparities, exposure to disparate environmental or infrastructure burdens from energy production, unequal levels of education, and racial and ethnic discrimination, create barriers to allowing all customers to benefit equally from energy use and decarbonization. Societal factors that uniquely impact the energy sector, like inflation, supply chain problems, volatile commodity prices, operations and maintenance, and state policy goals will also impact the ability of low- and moderate-income households to pay for essential energy services.

Yet currently, issues like how utilities design customer programs and what level of funding should be provided for energy assistance are litigated separately, in multiple proceedings. This can result in inconsistencies in how customers are determined eligible for programs, what information they receive about infrastructure investments, and what actions are most impactful and cost-effective for ratepayers to fund.

An EEP application would provide a venue in which stakeholders could develop a common understanding of equity and affordability challenges within a utility's service territory, and commit to a multi-year plan to guide how these challenges will be addressed across future proceedings. Staff proposes that an EEP have the following components, which could be tailored based on the size of the utility:

- **Customer Assessment.** A key component of an EEP would be a demographic and socioeconomic analysis of the utility's service territory that draws on publicly available and utility-specific data to clearly identify disproportionately impacted communities and the proportion of customers who experience energy insecurity or energy poverty.
- **Program Assessment.** The utility would identify approved and pending budgets and targets for retail customer programs and energy assistance programs that serve income-qualified customers and disproportionately impacted communities. By identifying common points of comparison across programs—such as bill savings or workforce benefits—the utility can show past performance and propose options to target or prioritize programs to particularly vulnerable populations or to communities that are best-positioned to capture benefits.
- **Infrastructure Assessment.** The utility would assess the potential for distribution, transmission, and generation capital investments over the next several years that are anticipated to be located in or proximate to a disproportionately impacted community. The analysis would identify benefits and burdens related to the actions under consideration. Identifying projects early creates opportunities to identify and mitigate impacts to local communities, or incorporate constructive opportunities like local workforce development or community benefits agreements.
- **Equity Priorities.** Impacts and benefits to disproportionately impacted communities may be related to their location (e.g., air quality) or to another factor, such as income and accessibility (e.g., energy program applications are English-only). Looking at the full suite of programs that customers may be eligible for alongside potential capital investments creates opportunities to prioritize programmatic and/or infrastructure investments to neighborhoods that may uniquely benefit from an equity perspective. Based on their customer, program, and infrastructure assessments, each utility should propose at least 3-5 quantifiable equity priorities for the period of the EEP. Out of this analysis, the utility would confirm which proceedings are anticipated to be

equity impact proceedings which will incorporate additional outreach and analysis as they help advance these equity priorities.

- **Community Education and Outreach.** Based on its equity priorities, the utility should present a plan for outreach and engagement with income-qualified customers and disproportionately impacted community customers with a focus on promoting awareness and incorporating those customers' insights into utility priorities and program designs. As part of this portion of the EEP, the utility should address whether it should create an ongoing equity advisory group. Establishing a multi-year plan will promote more opportunities for constructive engagement covering the issues that are most impactful to the diverse communities within the utility's service area.

The EEP provides a forum to create a common understanding of the communities that are disproportionately impacted for a utility; enables utilities and stakeholders consider the best combinations of energy assistance and energy programs to promote both affordability and equity; and promotes efficiency by enabling utilities and communities to plan ahead and coordinate related conversations, with a goal of reducing stakeholder fatigue. While the EEP would set equity targets, many specifics in how those targets would be achieved would be left to individual proceedings that would be litigated over the years, so as not to silo equity and affordability work to this single venue. For example, based on this process, utilities will be able to demonstrate whether or how equity impact proceedings—for example, on base rates, infrastructure investments, or retail customer programs—bring the utility closer to achieving equity goals.

Through EEPs, utilities, the Commission, and other stakeholders would have the ability to align all appropriate resources to reduce energy insecurity, energy poverty, and the inequities that accompany them, in a society for which energy is essential for full political, economic, and social participation.

