Comments of the Independence Institute

ON DECISION NO. C25-0792 AND PROPOSED RULES (ATTACHMENT A) PROCEEDING NO. 25R-0468ALL

I. INTRODUCTION

The Independence Institute respectfully submits these comments in response to Decision No. C25-0792 and Attachment A. We commend the Commission, its staff, and stakeholders for acknowledging a long-ignored reality: meaningful participation in Public Utilities Commission proceedings requires resources, expertise, and financial commitment far beyond the reach of ordinary ratepayers.

Despite this recognition, Commission proceedings remain dominated by experienced counsel, regulated utilities, and well-funded advocacy organizations with the institutional knowledge and financial capacity to navigate the system effectively. As a result, many consumers are functionally excluded from the regulatory process, a condition that contributes to regulatory capture and erodes public confidence in outcomes.

In response to rising utility costs and the inability of everyday consumers to meaningfully influence regulatory decisions, the Independence Institute established the Coalition of Ratepayers to engage directly in Commission proceedings. As documented in the *Coalition of Ratepayers Case Study*, the barriers to entry in utility regulation are real, expensive, and often insurmountable. Recognizing these structural challenges is an important and laudable step toward improving procedural equity.

However, the proposed rules do not simply improve access. They go beyond Senate Bill 21-272's directive under § 40-2-108(3)(b), C.R.S., to *consider equity* and instead construct a new regulatory regime that reshapes core adjudicatory processes. The rules create a new class of "Equity Impact Proceedings," impose mandatory pre-filing outreach and documentation requirements, shift burdens of proof, condition settlements, and apply heightened scrutiny primarily to fossil-fuel-related filings, while potentially under-scrutinizing renewable generation, transmission expansion, and electrification mandates where impacts on disproportionately impacted communities are less explicitly triggered.

These changes exceed the Commission's statutory authority, embed one-sided equity analysis, elevate process over outcomes, and expose Colorado ratepayers—especially low- and fixed-income households—to higher bills and increased reliability risks. Procedural equity should be strengthened, but it must be done within legislative bounds and in a manner that protects all consumers, not only select constituencies.

II. THE COMMISSION IS CREATING A NEW ADJUDICATORY CLASS WITHOUT STATUTORY AUTHORITY

A. SB21-272 Authorizes Consideration, Not Reconstruction of Proceedings

SB21-272 requires the Commission to promulgate rules that direct it to consider how best to provide equity, minimize impacts, and prioritize benefits for disproportionately impacted communities. It does not authorize the Commission to create a new adjudicatory framework governed by distinct procedural, evidentiary, or decisional standards.

B. The Capstone Report Confirms the Intent to Invent a New Class of Cases

The Staff Capstone Report filed in Proceeding No. 22M-0171ALL states: "Staff proposes the Commission adopt 'equity impact proceedings' as a new category of proceeding." It explains these proceedings: "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 adequately." And it directs utilities 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." It further provides: "The Commission would also be required to discuss how it considered equity in its final decision."

Rather than merely interpretive, these are legislative in effect, creating new obligations with legal impact.

C. The Proposed Rules Implement the Capstone Blueprint Verbatim

Decision No. C25-0792 and Attachment A adopt the Capstone framework wholesale by creating "Equity Impact Proceedings" applicable to electric resource plans, gas infrastructure plans, base-rate cases, CPCNs, and "any other proceeding as determined by the Commission." These proceedings impose mandatory outreach, equity-specific filings, settlement-conditioning requirements, and additive burdens of proof— thereby creating a new adjudicatory class by rule rather than statute—the rules condition settlement approval on equity showings and narrative responses to community concerns. SB21-272 does not authorize the Commission to impose equity-based settlement prerequisites, nor to modify long-standing settlement practice by rule.

Finally, the rules authorize community compensation for participation in proceedings without any explicit statutory funding mechanism or legislative authorization beyond the limited $250,000 for independent experts in SB21-272 (§40-2-108(3)(c)(I)). SB21-272 addressed intervenor transparency and Commission use of independent experts, but it did not create or authorize a ratepayer-funded participation program.

III. MISALIGNMENT WITH SB21-272'S LEGISLATIVE INTENT

SB21-272's legislative declaration emphasizes addressing 'historical inequities' through consideration, not mandatory pre-filing outreach or burden shifts. For instance, the bill specifies DIC input via 'informational meetings' for retail programs only, not across all filings. The rules' equity-specific burdens transform optional prioritization into decisional prerequisites, risking ultra vires action.

IV. REFERRAL TO AN ALJ DOES NOT CURE THE AUTHORITY DEFECT

The Commission’s referral of this rulemaking to an Administrative Law Judge does not resolve the threshold question of statutory authority. An ALJ may implement a framework but cannot decide whether SB21-272 authorizes the creation of new adjudicatory categories. This posture entrenches an ultra vires regime without addressing the foundational legal defect.

V. THE PROPOSED RULES GO FURTHER THAN COMPARABLE STATES

California and New York rely on express legislative mandates and statutory frameworks. They have not created new adjudicatory classes or shifted the burden of proof across utility proceedings by rule without statutory authority. Colorado’s approach is uniquely aggressive and legally vulnerable.

VI. RATEPAYER IMPACTS

Beyond the legal defects described above, the proposed rules will materially increase both the cost and the duration of Commission proceedings. Each new procedural requirement — including mandatory pre-filing outreach, multilingual translation, equity documentation, expanded notice obligations, equity-specific testimony, settlement-conditioning narratives, and heightened evidentiary burdens — requires additional legal work, consultant time, expert analysis, and administrative coordination.

These requirements are not abstract policy goals; they are billable professional services. Utilities do not absorb these expenses. Prudently incurred regulatory compliance costs are recovered in rates. Therefore, every additional translation, every new outreach requirement, every expanded filing obligation, and every delay in the procedural schedule are ultimately borne by ratepayers.

For example, the Coalition of Ratepayers Case Study documented that participation already costs mid-six figures per proceeding; these new layers will exacerbate that, passing costs to ratepayers without required offsetting efficiencies or cost caps. Moreover, layering new procedural steps onto already complex proceedings will extend case timelines, delay infrastructure investment, and increase litigation over compliance rather than substance. These delays compound cost, increase uncertainty, and further erode affordability for Colorado households.

SB21-272 prioritizes benefits for low-income/DICs, yet the added rules (e.g., outreach/translation) will increase costs without the required affordability analysis, contradicting the bill's aim to minimize impacts. Nothing in the proposed rules establishes cost caps, requires affordability analysis, or mandates offsetting efficiencies. The result is predictable: longer proceedings, higher regulatory expense, and higher utility bills—cementing Colorado's reputation as an unaffordable state.

VII. IMPROVING PROCEDURAL EQUITY — PRAISE FOR RECOGNIZING BARRIERS TO ENTRY

We commend Commission staff, Commissioners, and stakeholders for recognizing that meaningful participation requires resources beyond the reach of ordinary citizens. The Independence Institute's Coalition of Ratepayers Case Study explains: "The PUC does not put out the welcome mat for new players… the barriers to entry… are quite high including: an antiquated filing system, lack of affordable local counsel, and the need for highly skilled and usually very expensive expert witnesses." and that: "The expense of participation goes hand-in-hand with the legal specialization and expertise, causing extensive barriers to entry." Despite these obstacles, the Coalition: "materially assisted the Commission and even identified $87 million worth of modeling errors within Xcel's portfolios." This demonstrates the value of procedural access, multiple voices, and differing perspectives, which the rules could better support through neutral mechanisms. This recognition echoes SB21-272's call for DIC participation but should extend neutrally to all ratepayers.

VIII. THE EQUITY FRAMEWORK IS DISCRIMINATORY AND ONE-SIDED

The proposed rules apply equity scrutiny more heavily to fossil-fuel-related filings, while largely exempting:

- Industrial wind and utility-scale solar development
- Transmission expansion to integrate intermittent resources
- Electrification mandates that increase system costs.

While rules nominally apply to some renewables (e.g., ERPs under rule 3600), they effectively scrutinize fossil-fuel-related filings more, exempting many burdens on rural communities from wind/solar/transmission. These projects can impose burdens on rural and agricultural communities—land conversion, scenic degradation, wildlife impacts, eminent-domain takings, and lost property value—yet these impacts are excluded from equity analyses.

The framework also ignores the most direct equity harms:

- affordability impacts of overbuilding intermittent resources
- rate increases driven by massive transmission expansion
- blackout risks from non-dispatchable generation.

The bill targets communities with 'cumulative adverse conditions' (e.g., pollution, socioeconomic stressors) yet rules under-scrutinize renewables' impacts on rural DICs, ignoring the bill's holistic equity intent. Equity cannot be achieved by examining only half of the ledger, which requires a burden/benefit analysis, but arguing it's insufficient for affordability/reliability).

IX. DISAPPOINTMENT REGARDING EXCLUSION FROM THE STAKEHOLDER PROCESS & RECOMMENDATIONS

The Independence Institute is disappointed not to have been included in the stakeholder process, given its direct experience with these barriers. We spent mid-six figures participating in a proceeding and therefore sympathize deeply with those for whom cost makes participation impossible. (The Capstone Report excludes ratepayer groups like ours.)

We recommend:

- Expand participation beyond environmental justice organizations to include disenfranchised ratepayers.
- Replace utility-led outreach with a neutral ombudsman or third-party engagement model, with shared funding.

- Establish a competitive grant-and-reimbursement fund instead of paying selected groups directly (could align with the $250k expert allocation (§40-2-108(3)(c)(I)), extending access without new mandates).
- Include organizations with real participation experience in future stakeholder processes.
- Rework the website to make it user-friendly and easier to navigate, per rule 1509(e) for better public comment tools.

X. REQUESTED RELIEF

The Commission should:

- Withdraw the “Equity Impact Proceeding” framework (per rule 1603) to align with SB21-272's consideration mandate.
- Strike mandatory outreach and equity documentation requirements.
- Eliminate the burden-of-proof shift.
- Remove settlement-conditioning provisions.
- Withdraw community compensation rules (limit to bill-authorized experts).
- Apply any equity framework uniformly — or not at all.

XI. CONCLUSION

The Commission deserves recognition for confronting the real and persistent barriers that prevent ordinary citizens from meaningfully participating in utility proceedings. The acknowledgment that cost, complexity, and specialization exclude many voices is both accurate and overdue.

At the same time, Senate Bill 21-272 authorized the Commission to consider equity, not to create new adjudicatory classes, restructure proceedings, shift burdens of proof, or selectively apply heightened scrutiny to one category of resources while shielding others from comparable review.

The proposed rules implement a framework architected in the Staff Capstone Report that goes well beyond statutory authorization, discriminates among resource types, and ignores the most tangible equity harms of all: rising rates and declining reliability.

Equity cannot be achieved by examining only half of the ledger, nor by substituting administrative lawmaking for legislative direction.

Procedural access must be broadened to include disenfranchised ratepayers, rural communities, and small businesses — and it must be done through neutral mechanisms

such as an ombudsman or a competitive grant-and-reimbursement fund, not by creating a new regulatory regime that shifts costs onto those least able to pay.

For these reasons, the Commission should substantially revise the proposed rules to remain within its delegated authority, apply equity considerations uniformly and without imposing overly burdensome regulatory requirements, and protect Colorado ratepayers from unnecessary costs and risks. Revise to fulfill SB21-272's equity goals without exceeding its bounds.

Respectfully submitted,

Amy Cooke
Independence Institute
December 23, 2025