

**COLORADO PUBLIC UTILITIES COMMISSION  
PROCEEDING No. 25R-0309G**

**COMMENTS OF THE INDEPENDENCE INSTITUTE ON PROPOSED  
CLEAN HEAT PLAN TARGETS**

The Independence Institute (II), a 501 (c) (3) organization founded in 1985 and headquartered in Denver, Colorado, is the state’s largest champion of free markets, including energy and environmental policy. II’s mission is to empower individual Coloradans and to educate citizens, legislators, and opinion makers about public policies that advance personal and economic freedom.

The Independence Institute believes that affordable, reliable, abundant, and safe energy can coexist with a clean and thriving environment. II’s Energy and Environmental Policy Center (E2P) is guided by the principle that prosperity and environmental stewardship are not mutually exclusive.

**EXECUTIVE SUMMARY**

The Colorado Energy Office and Air Pollution Control Division propose a 41 percent greenhouse gas (GHG) reduction target by 2035 for investor-owned gas utilities. The record from the first Clean Heat Plan (CHP) proceeding shows this is economically and technically unworkable — even the 22 percent by 2030 target could not be met without exceeding the statutory 2.5 percent retail rate impact cap. Black Hills Colorado Gas’ full-compliance portfolio was 67× over the cap; Xcel Energy projected over \$1 billion in compliance costs plus more in customer conversion expenses.

Independent modeling projects indicate that Governor Jared Polis’s plan for full residential heat electrification and a 100 percent renewable grid would cost up to \$620.7 billion by 2050, require 12 times today’s capacity, and still result in winter blackouts.

State law (§ 40-3.2-108, C.R.S.) allows the Commission to set Clean Heat Plan targets beyond 2030. However, the statutory deadline was forced to be extended—evidence of the difficulty, if not impossibility, of meeting them under current cost and technical constraints. Setting such a high target invites claims of regulatory overreach and constitutional challenges.

Regulatory Research Associates warns that Colorado’s increasingly contentious regulatory environment raises investor risk and financing costs.

The Commission should reject or revise the proposal to ensure cost-effectiveness, investor confidence, and protection against regulatory takings claims — building a clean energy transition on durable, lawful, and financially sustainable terms.

**INTRODUCTION**

The Colorado Public Utilities Commission (“Commission”) has opened this rulemaking to

consider a petition from the Colorado Energy Office (“CEO”) and the Air Pollution Control Division (“APCD”) to set new Clean Heat Plan (“CHP”) targets, including a proposed 41 percent greenhouse gas (“GHG”) reduction by 2035 for investor-owned gas utilities. While the goals of reducing emissions and improving environmental outcomes are important, the Commission must avoid actions that could be deemed arbitrary and capricious under state or federal APA standards and ensure that any targets are economically sustainable, technically feasible, and legally defensible.

The record from prior CHP proceedings, independent cost modeling, and current investor risk assessments all point to the same conclusion: the proposed 2035 target—especially without a rate cap—will impose staggering costs on ratepayers, create financing headwinds for utilities, and expose the Commission to legal challenges.

## **AFFORDABILITY, ECONOMIC IMPACT, AND LEGAL RISK**

The Commission’s own record from the first CHP cycle demonstrates that no utility can meet the statutory emissions targets without either violating the cost cap or imposing unsustainable costs on customers.

- **Black Hills Colorado Gas (BHCG):** In Proceeding No. 23A-0392EG, BHCG’s “Target Achievement” portfolio to fully meet the 22 percent GHG reduction by 2030 was estimated at approximately \$397 million per year, 67× higher than the statutory cost cap. The “Within Cost Cap” portfolio only achieved ~11 percent of the target, confirming the structural infeasibility of meeting both requirements (Hearing Exhibit 104, Attachment AWC-1, Rev. 1, p. 9).
- **Xcel Energy:** In its CHP filing, Xcel reported that modeling conducted with Energy and Environmental Economics, Inc. (“E3”) found that meeting the 2030 target would cost over \$1 billion over five years, far above the statutory ~\$170 million total cap. Electrification-heavy approaches could impose over \$20,000 in personal conversion costs per home (pre-incentive), totaling billions statewide even after rebates. Xcel concluded that “meeting both the statutory emissions target and the statutory cost target is likely not possible in the same scenario” (Hearing Exhibit 101, Attachment JW1-1, p. 7).
- **Independent Study:** The Independence Institute estimated that complete residential heating electrification combined with the Governor’s 100 percent renewable electricity mandate by 2040 would cost Coloradans **up to \$620.7 billion through 2050**, drive household electricity bills as high as **\$856/month**, require **12× current generation capacity**, and still cause **26 hours of mid-winter blackouts** in a 2021-type weather year. By contrast, a nuclear-based strategy could achieve the same goals at less than one-third the cost without reliability issues (Independence Institute, [Colorado’s Energy Future: The High Cost of 100 Percent Electric Home Heating](#), [IP-3-2023], pp. 1-2, 6).
- **Investor Confidence:** Regulatory Research Associates, part of S&P Global Commodity Insights, has warned that Colorado’s regulatory climate for gas utilities has become increasingly contentious and risk-prone, particularly in CHP proceedings. They caution that unpredictability in PUC policy “increases risk for investors” and can raise utility financing costs, undermining capital availability for the state’s energy transition (Regulatory Research Associates, *Colorado Regulatory Review*, July 2025, p. 2).

- **Regulatory Overreach Risk:** State law (§ 40-3.2-108, C.R.S.) sets Clean Heat Plan targets, decision deadlines, and compliance timelines. The legislature recently extended the Commission’s deadline to set the 2035 target from December 1, 2024, to December 1, 2025—granting regulators more time to deliberate, but no additional time for utilities or ratepayers to comply. This compressed compliance window, combined with an increase in the target from 22 percent to 41 percent by 2035, will impose undue hardship on both utilities and customers—especially when the record from the first CHP proceeding shows the existing 22 percent target cannot be met without blowing past the statutory 2.5 percent retail rate cap. This is a recipe for economic and legal trouble.
- **Potential Regulatory Takings:** For gas-only utilities (e.g., Atmos Energy in Colorado), a mandate to convert customers to electric service could destroy their customer base, strand assets, and effectively eliminate their business model, raising a credible claim of a regulatory taking under the Fifth and Fourteenth Amendments, particularly where less-intrusive alternatives exist. Recent federal precedent—such as EPA’s partial disapproval of Colorado’s SIP provision mandating closure of the Ray Nixon coal plant despite Clean Air Act compliance—illustrates federal recognition that forced closure of viable, compliant generation can constitute severe interference with property rights (EPA, *Colorado SIP Disapproval – Ray Nixon Station*, 89 Fed. Reg. 42,118, 42,120 [May 10, 2024]).

## CONCLUSION

The proposed 41 percent GHG-reduction target by 2035—set without a cost cap—is economically unsound, technically infeasible, and legally vulnerable. It threatens to deter critical capital investment and invites challenges. The Commission should reject the target outright or substantially revise it to:

1. Avoid actions that could be deemed arbitrary and capricious under state or federal APA standards;
2. Ensure cost-effectiveness and proven technical feasibility;
3. Preserve investor confidence in Colorado’s regulated utility sector; and
4. Avoid measures that could constitute an unconstitutional regulatory taking.

Colorado’s clean energy transition must be built on policies that are lawful, durable, and financially sustainable—not aspirational mandates divorced from economic realities and operational constraints.

Comments respectfully submitted,

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