

Federal Concepts in Environmental and Energy Justice

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Our Energy System: Benefits, Burdens, Barriers



- Some communities face disproportionate **burdens** of existent energy system, see fewer **benefits**, and greater **barriers** to engaging in system.
 - POC and low income communities are significantly more likely to be proximate to polluting forms of energy infrastructure and more likely to experience related health impacts
 - Low income and POC communities tend to face higher **energy burdens** (% of gross household income spent on energy costs)
 - Low income and POC workers, overall, have less access to energy industry jobs, particularly clean energy jobs – 2023 USEER
 - Low income and POC communities more likely to be located along the fenceline of energy facilities and infrastructure, and ultimately on the frontlines of climate-related consequences of our energy system and needs
 - Less access to investment, ownership of energy systems and infrastructure

Environmental Justice and Energy Justice



- Environmental Justice (E.O. 12898)
 - means the **just treatment** and **meaningful involvement** of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:
 - are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
 - have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.
- Environmental Justice Communities
 - disadvantaged communities that have been historically marginalized and disproportionately overburdened by pollution and other impacts/externalities of the energy system, including, but not limited to, minority populations, low-income populations, or indigenous peoples.

Energy Justice



- DOE definition

- define energy justice as “the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on those disproportionately harmed by the energy system” (Initiative for Energy Justice, 2019).

EJ Shortcomings/Issues/Failings Raised by Communities



- EJ communities and advocates have a long and rich history in participating in federal processes, court cases, etc. related to environmental outcomes and energy policy and decisionmaking
 - Particular spotlight in recency with growing federal recognition of EJ and energy justice concepts.
 - Some issues raised by EJ communities and advocates have included:
 - Flawed study methodologies/scoping issues in NEPA reviews in context of Environmental Justice
 - *Vecinos Para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331 (D.C. Cir. 2021) (*Vecinos*).
 - Improper dismissal of community data
 - Insufficient analysis of alternatives/potential mitigation
 - EJ treated with less importance than other considerations in agency reviews/proceedings
 - Lack of EJ community involvement in key federal processes & participatory barriers
 - Tribal consultation issues
 - Lack of federal investment in EJ communities; lack of investments to increase reliability and lower costs for communities facing high energy burdens

Environmental Justice and Energy Justice E.O.s



- Foundational executive orders – not binding to ind. Fed. Agencies but have been adopted by some, like FERC who has adopted 12898 and 13985.
- Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629; February 16, 1994
 - Directs most federal agencies to identify and address disproportionately high and adverse human health or environmental effects on environmental justice communities,
 - Develop strategies for implementing environmental justice
 - Promote nondiscrimination in federal programs that affect human health and the environment, and provide minority and low-income communities access to public information and public participation.

Environmental Justice and Energy Justice E.O.s



- Executive Order 13985 - Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009; January 20, 2021
 - Directs federal agencies to assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available
 - Directs agencies to develop equity action plans to overcome these barriers, and provide periodic updates to these plans
- Executive Order 14096 - Revitalizing our Nation's Commitment to Environmental Justice for All, 88 FR 25251; April 26, 2023
 - Directs most federal agencies to address and advance environmental justice, supplementing the foundational efforts of E.O. 12898
 - Asks federal agencies to:
 - make achieving environmental justice a part of its missions
 - Providing opportunities for early and meaningful involvement in the NEPA process by communities with environmental justice concerns potentially affected by a proposed action.

EJ, CEQ, NEPA Phase II



- NEPA directs agencies to “take a hard look at environmental consequences” of their proposed actions, consider alternatives, and publicly disseminate such information before taking final action.
- Federal agencies (Including FERC which in its own regulations states that it “will comply with the regulations of the [CEQ] except where those regulations are inconsistent with the statutory requirements of the Commission) are legally obligated to follow CEQ’s regulations
- Phase II Regs:
 - Require federal agencies to "encourage and facilitate public engagement in decisions that affect the quality of the human environment, including meaningful engagement with communities such as those with environmental justice concerns."
 - Represent a first real attempt to codify a requirement to engage with communities to promote "environmental justice" in reviews;
 - Regulations encourage the use of available screening tools, such as the Climate and Economic Justice Screening Tool and the EJScreen Tool, to assist in identifying communities with EJ concerns

Justice40 (“J40”) and DOE



- During his first week in office, President Biden issued **Executive Order 14008**, Tackling the Climate Crisis at Home and Abroad.
- Section 223 of EO 14008 established the Justice40 Initiative, which directs 40% of the overall benefits of certain Federal investments in areas like climate change, clean energy and energy efficiency to go to disadvantaged communities (DACs)
- 8 policy priorities guiding DOE’s J40 Implementation:
 - Decrease energy burden in disadvantaged communities (DACs).
 - Decrease environmental exposure and burdens for DACs
 - Increase parity in clean energy technology (e.g., solar, storage) access and adoption in DACs.
 - Increase access to low-cost capital in DACs.
 - Increase clean energy enterprise creation and contracting (MBE/DBE) in DACs.
 - Increase clean energy jobs, job pipeline, and job training for individuals from DACs.
 - Increase energy resiliency in DACs.
 - Increase energy democracy in DACs.

Approaches/identified opportunities/reforms/tools



- Development of agency policy frameworks and guidance documents related to environmental or energy justice
- Requiring applicants to provide more information about environmental justice
 - Information requests in permitting proceedings
- Building engagement with Environmental Justice communities in at the start of permitting frameworks
 - E.g., FERC Order No. 1977
 - requires applicants to develop engagement plans with environmental justice communities and Indian tribes.
- Integration of recommendations from White House Environmental Justice Advisory Council (WHEJAC), certain offices within EPA, and other bodies w/ fed EJ expertise



Approaches/identified opportunities/reforms/tools



- Establishment of offices to aid with public participation in agency processes
 - FERC OPP
- Agency Offices/Roles with EJ focus
 - EJ team w/in FERC's Office of Gen. Counsel (OGC) – Senior Counsel
 - DOE Office of Energy Justice and Equity
 - DOE Office of Energy Justice Policy and Analysis
- Undertaking studies on EJ and energy justice
- Public fora, roundtables, RFI's, comment periods and technical workshops on EJ, energy justice and community impacts
- Efforts (liaisons, roles) to enhance consultation with Tribes



○ Thank you!