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Environmental Justice: The Roles and Responsibilities of Public Power

Introduction and Background

Environmental justice (EJ) is at the forefront of the Biden administration's whole of government approach to "advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."¹ Public awareness is growing about environmental justice, equity, and inclusion. EJ advocates are increasingly seeking change in how current and future energy projects are developed, a reduction in fossil fuel use, community investments, permitting decisions, federal/state regulatory and legislative processes, electricity rates, clean energy incentives, and assertively calling for increased environmental enforcement in overburdened communities. Public power utilities should be aware of these developments and plan accordingly. The American Public Power Association (APPA) does not yet have a policy position on EJ overarchingly, but does have policy on several of the elements that are mentioned above as part of EJ advocates' priorities.

The Environmental Protection Agency (EPA) defines EJ as the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.² Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should "bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."³ As defined by EPA, EJ has two components: (1) environmental equity (i.e., ensuring that environmental risks and harms are shared proportionally); and (2) community-based public engagement and consultation (i.e., ensuring that all people have an equal voice). The preferred nomenclature for communities affected by EJ issues has changed over time (e.g., frontline, disadvantaged, overburdened, underserved, minority, low-income, communities of color), and EJ leaders continue to evaluate appropriate terminology.⁴

EJ communities are located throughout the United States. These communities most commonly share these attributes: minority, low-income, tribal, or indigenous populations that potentially experience disproportionate environmental harms and risks. This can result from greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors.⁵

EPA has a responsibility under presidential Executive Order (E.O.) 12898, "Federal Actions to

¹ Executive Order 13985, "On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" (January 27, 2021) (E.O. 13985).

² See EPA's, Environmental Justice Website (2021) <https://www.epa.gov/environmentaljustice>.

³ Id.

⁴ See, e.g., White House Env't Justice Advisory Council, Draft Recommendations on: Justice40 Climate & Econ. Justice Screening Tool & Exec. Order 12898 Revisions 3 (May 2021).

⁵ See EPA's EJ 2020 Glossary, <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

Address Environmental Justice in Minority Populations and Low-Income Populations," to consider the impacts of their regulatory actions on populations documented as frequently bearing the greatest burdens imposed by environmental pollution.⁶ Through EO 12898, the Biden administration has also established the Interagency Working Group on Environmental Justice (EJ IWG) to provide a forum for federal agencies to advance environmental justice principles collectively. The EJ IWG works with agencies to increase local community capacity to promote and implement innovative and comprehensive solutions to environmental justice issues.

Public Power Engaging Communities

The concept of public participation is embedded within the public power model; utilities regularly engage all communities on generation planning, siting, transmission issues, and rate design that is affordable and fair. We recognize that public participation is a process, not a single event. It consists of a series of activities and actions by a utility over the entire lifespan of a project to inform the public and obtain input from them. Most importantly, public participation allows stakeholders to influence local decisions that affect the community.

Public power utilities have long supported programs and rates that promote equity, including energy efficiency, local renewable, and low-income programs. Some have more recently made additional investments in overburdened communities. Such investments can reinvigorate neighborhoods, engage youth, restore habitats, lift local businesses, beautify common areas, and invite all customers to participate in a sustainable community.

Some programs might include heating, ventilation, and air conditioning energy upgrades for seniors, veterans, and individuals with disabilities in underserved communities; walkability upgrades along roads that enhance student access to parks and schools; installation of community solar projects and workforce and literacy programs.

The electric power sector is facing a transformational shift to low- or non-emitting generation resources and must ensure an equitable sharing of the benefits – as well as the burdens – of those resources on the system. The shift to cleaner resources improves the land, water, and air quality for all communities. This energy transition may offer opportunities to engage locally and better meet the needs of disadvantaged and disproportionality impacted communities.

Public power's tenets of providing affordable and reliable and environmentally sustainable electricity provide a strong foundation for these conversations.

Federal Actions

EJ is a foundational pillar of the Biden administration's initiative to "mitigate the negative societal and environmental impacts of climate change." In 2021, President Biden issued two executive orders – E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, and E.O. 14008, *Tackling the Climate Crisis at Home, and Abroad* – that directed federal agencies to promote and work toward proactively achieving environmental justice.⁷ Federal agencies are directed to develop and implement policies and strategies that strengthen compliance and enforcement. Agencies have been directed to incorporate EJ considerations in their work, increase community engagement, and ensure at least 40 percent of the benefits from federal investments in climate and clean energy flow to underserved communities.

⁶ Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", Federal Register Presidential Documents Vol. 59, No. 32, February 16, 1994.

⁷ Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad", 86 FR 7,619 (February 1, 2021) (E.O. 14008).

An outgrowth from E.O. 14008 was the formation of the White House Environmental Justice Advisory Council (WHEJAC), which is intended to bring greater visibility to EJ issues across the federal government. WHEJAC advises the administration on how to increase the federal government's efforts to address current and historic environmental injustice through strengthening EJ monitoring and enforcement. WHEJAC also provides advice and recommendations to the newly established White House Environmental Justice Interagency Council and the Chair of the Council of Environmental Quality on a whole-of-government approach to EJ, including, but not limited, to EJ in the following areas:

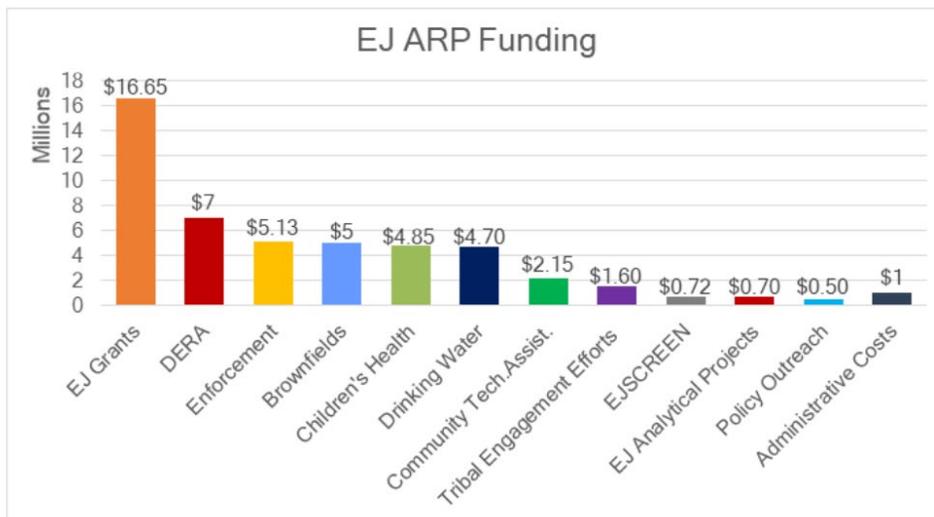
- Climate change mitigation, resilience, and disaster management
- Toxics, pesticides, and pollution reduction in overburdened communities
- Equitable conservation and public lands use
- Tribal and Indigenous issues
- Clean energy transition
- Sustainable infrastructure, including clean water, transportation, and the built environment
- National Environmental Policy Act, enforcement, and civil rights

EPA's National Environmental Justice Advisory Council (NEJAC) partners with WHEJAC to provide advice and recommendations on broad, cross-cutting issues related to EJ, from all stakeholders involved in the EJ dialogue. EPA's "Equity Action Plan" which is being developed, is an initiative that NEJAC is supporting, as well as the update to EJCREEN, EPA's environmental justice mapping tool, which will include climate change data in version 2.0.

Federal departments are also adding key personnel to guide the program and policy initiatives that support EJ communities. The Department of Energy (DOE) recently hired a Senior Advisor in the Office of Economic Impact and Diversity. This position will guide DOE's efforts to build relationships with EJ communities and provide advice and training to break down barriers to federal funding programs. Similarly, the Federal Energy Regulatory Commission (FERC) recently added a Senior Counsel for Environmental Justice and Equity. The position will be responsible for building a culture and program that ensures FERC appropriately integrates environmental justice and equity issues into decision-making.

Congressional Activity

Congress has also addressed environmental justice concerns through the American Rescue Plan (ARP), which President Biden signed into law in March 2021. The law provides funds to address health outcome disparities from pollution and the COVID-19 pandemic. Congress designated \$50 million in EJ funding for grants, contracts, and other agency activities that identify and address disproportionate environmental or public health harms and risks in underserved communities due to COVID-19 and other pollution. This is being done through a range of local initiatives authorized by specified provisions of the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), the Brownfields Law, and the Diesel Emissions Reduction Act (DERA). The below graphic illustrates how EPA has apportioned the EJ ARP funding across its various programs.



Source: <https://www.epa.gov/arp/environmental-justice-funding-under-arp>.

On March 2, 2021, House Energy & Commerce Committee Democrats formally introduced HR, 1512, the Climate Leadership and Environmental Action for our Nation's (CLEAN) Future Act. While the CLEAN Future Act has not been marked up, there are provisions addressing EJ that public power utilities need to be aware of as states and localities seek to address EJ concerns.

The bill language would require that 40 percent of the funds made available under it benefit EJ communities. In addition, the bill would create an array of new grant programs and regulatory requirements to support EJ initiatives and institute new environmental justice training and requirements within federal agencies. It also would direct DOE to assess the challenges and opportunities for deploying electric vehicle charging infrastructure in underserved communities and would establish a DOE grant program to support access to such infrastructure.

While Title VI of the bill focuses on environmental justice, equity and justice components are woven into all aspects of the legislation. Within Title VI, the provisions aim to not only protect the health and safety of communities disproportionately impacted by environmental harms and risks, but also include grants to enable those communities to participate in decision-making processes under the CAA, SDWA, and Solid Waste Disposal Act.

The CLEAN Future Act contemplates increased air quality monitoring for toxic air pollutants and would expand the national ambient air monitoring network in EJ communities. It also would restrict the issuance of permits for major sources of air pollutants in areas that are determined to be pollution burdened.

Other provisions include funding for a new program to replace lead water service lines across the country, a 10-year deadline for cleaning up all federal Superfund sites, protections for underground drinking water sources from enhanced oil recovery, new coal ash disposal requirements, and repeal of oil and gas production exemptions from landmark environmental laws. The CLEAN Future Act also would create a climate justice grant program to provide \$1 billion each year from 2022 to 2031 to help communities respond to the impacts of climate change.

Next Steps

In 2022, the Biden administration will be making operational the Environmental Scorecard, which will be part of the governmentwide Justice40 initiative to ensure that at least 40 percent of clean

energy and other infrastructure investments goes to vulnerable communities.⁸ The administration has also signaled that it will increase enforcement actions against entities operating in EJ communities and contributing to pollution problems. In addition, the administration has said that it intends to take a more active role in reviewing environmental permit applications in EJ communities, emphasizing the impact facility operations have on cumulative pollution releases in EJ communities.

APPA members are mindful that investments in electricity infrastructure must be undertaken with a recognition of the impacts these projects have on surrounding communities and the workforce. The public power business model supports local decision making and is customer-focused. The model allows for ongoing collaboration with EJ communities to understand better how public power utilities can support community needs, especially as they continue to reduce greenhouse gas and other emissions from energy generation through advancing low- and non-emitting technologies.

⁸ E.O.14008.