



Comments on the New Jersey Energy Master Plan

Submitted by the New Jersey Environmental Justice Alliance

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Introduction

The New Jersey Environmental Justice Alliance (NJEJA)¹ would like to submit the following comments to the Board of Public Utilities (BPU) in response to its queries regarding the prospective Energy Master Plan (EMP) that will be issued in 2019.

NJEJA has become a leader in developing local, state and national public policy from an environmental justice (EJ) perspective. This perspective leads to concerns that if climate and energy policy is developed in a “business as usual” manner inequalities that currently exist in our society that are rooted in race and class² will be perpetuated or perhaps even exacerbated. In

¹ The NJEJA mission statement reads as follows: “The New Jersey Environmental Justice Alliance is an alliance of New Jersey-based organizations and individuals working together to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities. NJEJA will support community efforts to remediate and rebuild impacted neighborhoods, using the community’s vision of improvement, through education, advocacy, the review and promulgation of public policies, training, and through organizing and technical assistance.”

² NJEJA has repeatedly made this point in comments it has submitted to various governmental agencies on various types of public policy issues. In many of those comments we have provided some information on race and income based inequalities and do so again here by reproducing the text of a footnote from a previous set of comments: “For example, in previous comments we pointed out disparities in health, wealth and pollution exposure that might contribute to a heightened vulnerability to pollution. For more information on health disparities see *Health, United States, 2012: With Special Feature on Emergency Care*, NATIONAL CENTER FOR HEALTH STATISTICS (2013); Rachel Morello Frosch et al., *Understanding the Cumulative Impacts of Inequalities In Environmental Health: Implications for Policy* 30 HEALTH AFFAIRS 879, 880-881 (2011); Nancy Adler and David Rehkopf, *US disparities in health: descriptions, causes, and mechanisms*, 29 ANNU REV PUBLIC HEALTH 235 (2008); William Dressler, *Race and Ethnicity in Public Health Research: Models to Explain Health Disparities*, 34 ANNU. REV. ANTHROPOL. 231 (2005); Roberta Spalter-Roth, *Race, Ethnicity, and the Health of Americans*, American Sociological Association Series On How Race And Ethnicity Matter, SYDNEY S. SPIVACK PROGRAM IN APPLIED SOCIAL RESEARCH AND SOCIAL POLICY (2005); George Mensah, *State of disparities in cardiovascular health in the United States*, 111 CIRCULATION 1233 (No. 10) (2005).

For information on wealth disparity see Thomas Shapiro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, INSTITUTE ON ASSETS AND SOCIAL POLICY (2013).

For information on disparities in exposure to air pollution see generally Michael Ash et al., *Justice in the Air: Tracking Toxic Pollution from America's Industries and Companies to Our States, Cities, and Neighborhoods* (2009); Manuel Pastor et al., *The air is always cleaner on the other side: Race, space, and ambient air toxics exposures in California*, 27 JOURNAL OF URBAN AFFAIRS 127 (No. 2) (2005); Douglas Houston et al., *Structural disparities of urban traffic in Southern California: implications for vehicle related air pollution exposure in minority and high poverty neighborhoods*, 26 JOURNAL OF URBAN AFFAIRS 565 (No. 5) (2004); Manuel Pastor et al., *Waiting to Inhale: The Demographics of Toxic Air Release Facilities in 21st-Century California*, 85 SOCIAL SCIENCE QUARTERLY 420 (No. 2) (2004); Michael Jarrett et al., *A GIS- environmental justice analysis of particulate air pollution in Hamilton, Canada*, 33 ENVIRONMENT AND PLANNING A 955 (No. 6) (2001); D.R. Wernette and L.A. Nieves, *Breathing Polluted Air*, 18 EPA JOURNAL 16 (1992). These investigations found a racial component to exposure to air pollution. Another study also presented evidence that in California people Of Color households live closer to polluting facilities at all income levels than White residents. See Manuel Pastor et al., *Minding the Climate Gap, What's at*



order to avoid reinforcing these inequalities, EJ and equity should be incorporated into climate and energy policy as it is created and implemented, not at a later date. To that end, NJEJA has advocated in past comments submitted on New Jersey's EMP that the state should create a coherent urban energy strategy that addresses the energy, and several other, needs of EJ communities (communities Of Color and low-income communities).

In these comments, we present ideas that should be components of a coherent urban energy strategy in our state while recognizing that such a strategy should not be limited to these ideas. Several of the ideas are new and NJEJA also recognizes they need to be discussed and developed further and is ready and anxious to do so with BPU.

Emissions Reductions

Part of the motivation for the creation of the EJ movement was provided by reports indicating there was a disproportionate number of unwanted land uses sited in EJ communities.³ There have also been investigations conducted that demonstrate EJ communities are exposed to higher levels of air pollution than other communities.⁴ Disproportionate numbers of polluting facilities and elevated air pollution concentrations in EJ communities are trends that hit close to home in New Jersey. The New Jersey Department of Environmental Protection (NJDEP) developed evidence that cumulative impacts levels in New Jersey neighborhoods are correlated with race and income. As the number of either residents Of Color or low-income residents in New Jersey communities increases so does the level of cumulative impacts.⁵ In this context cumulative impacts can be thought of as a very rough estimate of the total amount of pollution in a neighborhood.⁶ This relationship between pollution levels, race and income violates our nation's

Stake if California's Climate Law Isn't Done Right and Right Away, COLLEGE OF NATURAL RESOURCES, UNIVERSITY OF CALIFORNIA, BERKELEY, USC PROGRAM FOR ENVIRONMENTAL & REGIONAL EQUITY, *Minding the Climate Gap Report 4*, at 9 (Figure 2).

The previous comments referenced earlier in this footnote are: Nicky Sheats, *Comments on the Newark Bay Partnership LP Application for Permit Renewal and Minor Modification*, Program Interest Number: 07617, Air Pollution Control Bureau of Air Permits Activity Number: BOP 150001 (June 11, 2018), submitted by the New Jersey Environmental Justice Alliance, at pg. 5 fn. 14.

³ Two influential reports were: *Siting Of Hazardous Waste Landfills And Their Correlation With Racial And Economic Status Of Surrounding Communities*, UNITED STATES GOVERNMENT ACCOUNTING OFFICE (1983) and *Toxic Waste and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites*, UNITED CHURCH OF CHRIST. COMMISSION FOR RACIAL JUSTICE (1987).

⁴ See the section of note 2, *supra*, that provides citations for articles on disparities in exposure to air pollution.

⁵ This evidence is presented in two figures that are part of a report and a power point that describe a nascent cumulative impacts screening tool which was developed by NJDEP. They can be found on page five of the report and slide 19 of the power point which are both entitled "A Preliminary Screening Method to Estimate Cumulative Environmental Impacts". The report and power point can be accessed at http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods20091222.pdf and http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods_pp20091222.pdf, respectively.

⁶ A more formal definition is the risks and impacts caused by multiple pollutants, which are usually emitted by multiple sources of pollution in a neighborhood, and their interaction with each other and any social vulnerabilities that exist in the neighborhood. See *Cumulative Impacts: Building a Scientific Foundation*, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, at 3 (2010); *Ensuring Risk Reduction In Communities With Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*, NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, at 5 (2004).



standards of justice, fairness and equity and should not be accepted. Of course, a primary concern is that elevated levels of pollution will contribute to elevated levels of disease in EJ communities. This is especially true since just one type of air pollution, airborne particulate matter, has been connected to various physical disorders including pulmonary and heart disease.⁷ For this reason, NJEJA and other EJ organizations have advocated that, in addition to fighting climate change, climate change mitigation policy should be used to decrease the disproportionate amount of air pollution borne by many EJ communities.⁸ NJEJA has developed a specific recommendation that it would like to see incorporated into the Regional Greenhouse Gas Initiative, particularly as it will operate in New Jersey if it is adopted by the state, that would guaranty emissions reductions from polluting facilities located in EJ communities.⁹

The EMP could also significantly impact the amount of air pollution in EJ communities. Perhaps the most direct way would be by affecting where polluting energy infrastructure is sited. NJEJA believes the EMP should not allow new polluting energy infrastructure to be sited in New Jersey EJ communities. In this way, the EMP would not exacerbate the very troubling relationship between race, income and pollution levels in New Jersey. Although it will probably be more difficult, the EMP should also search for ways to achieve emissions reductions for EJ communities through the use of EE and RE. This will be more challenging because EE and RE are typically connected to the location of emissions through the electricity grid and thus it is exceedingly difficult to link specific EE and RE activities to specific emissions locations. However, innovative thinking might generate opportunities to establish this link and NJEJA would be eager to explore possibilities with BPU.

Take Steps To Ensure That EE and RE Will Be Accessible To New Jersey EJ Communities

If affirmative actions are not taken to ensure that EE and RE are accessible to EJ communities, NJEJA fears they will be utilized primarily and disproportionately in White middle class and upper-class communities, and not used sufficiently in communities Of Color and low-income communities. If this does occur it would be an example of climate change and energy policy perpetuating and very likely exacerbating current societal racial and class based inequalities.

One mechanism for ensuring this accessibility, that NJEJA similarly suggested in its comments on the community solar pilot program submitted recently to BPU, is a set aside for EJ communities in any EE or RE program developed by the state. In its community solar pilot program comments NJEJA recommended that at least 24% of customers served by the pilot program should be of middle or low-income with at least 10.4% being low-income.¹⁰ This is the lowest the set aside should be and NJEJA would, of course, strongly support a higher level set

⁷ See C. Arden Pope and Douglas W. Dockery, *Health Effects of Fine Particulate Air Pollution: Lines That Connect*, 56 JOURNAL OF THE AIR AND WASTE MANAGEMENT ASSOCIATION 709 (2006).

⁸ See Nicky Sheats., *Achieving Emissions Reductions For Environmental Justice Communities Through Climate Change Mitigation Policy*, 41(2) WILLIAM AND MARY ENVIRONMENTAL LAW AND POLICY REVIEW 377 (winter 2017); *New Jersey Environmental Justice Climate Change and Energy Policy Platform*, NEW JERSEY ENVIRONMENTAL JUSTICE ALLIANCE (2017).

⁹ *Id.*

¹⁰ See New Jersey Environmental Justice Alliance, *Comments on the Community Solar Pilot Program*, prepared by Nicky Sheats, at 4 (2018).



aside. In these comments, we are recommending that set asides be created for EJ communities in any EE and RE program created by the state.

Furthermore, NJEJA recommends that at least one-third of the clean energy fund be dedicated to EE and RE programs in EJ communities. Although NJEJA has not seen any hard data on the topic, we strongly suspect that the amount of funds contributed to the clean energy fund by EJ community residents through the societal benefits charge is greater than the amount of funds or value of services returned to those communities through energy programs.

Public Participation in Stakeholder Processes

BPU must also take steps that allow and promote the participation of EJ community residents, EJ organizations and community organizations in their stakeholder processes. In its community solar comments NJEJA discussed public participation for EJ communities and here reiterates the recommendations made in those comments.¹¹ Public participation can be particularly difficult for residents in EJ communities, in part due to a variety of social vulnerabilities they face.¹² Similarly, EJ and community organizations frequently have difficulty engaging in governmental public processes due to a lack of human and financial resources.¹³ NJEJA has made the following suggestions that, if followed, would result in a more meaningful participatory process for EJ communities and organizations: 1) hold meetings in EJ communities; 2) hold meetings at times that make it easier for community residents to attend; 3) advertise meetings specifically to EJ communities as well as the general public; 4) invite EJ and community organizations that operate in the area where the meeting is being held; 5) consider contacting the area EJ and community groups to seek their help in crafting an agenda for the meeting; 6) ask the area EJ and community groups for advice on the best ways to engage community residents and other community organizations.¹⁴ These suggestions do not form the universe of ideas with respect to effective community engagement but they should be, at the very least, a good start. Another critical aspect of the participatory process is that EJ community and organizational stakeholders should have a real opportunity to affect the outcomes produced by the process. At the conclusion of the process, if community participants feel they never really had a chance to affect the decisions of BPU this could lead to bitterness on the part of the community and a refusal to participate in future processes. BPU must be willing to allow community input to impact their decisions.

Community Energy Planning

Community energy planning is a process conceptualized by the Center for Earth, Energy and Democracy¹⁵ in Minneapolis that would involve community residents, community organizations and EJ organizations in decisions about energy production and consumption in their particular community. Participation in energy planning is often restricted to energy professionals and government employees. Residents, EJ organizations and community organizations often don't have input into energy decisions made about their own communities. Community residents

¹¹ *Id.* at 4-5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The organization's website can be accessed at ceed.org.



should not be limited to just consuming energy but should also be part of decisions made about energy production and conservation that occur on a community level. Community residents should have a significant role in determining what type of energy infrastructure is deployed in their community, where energy efficiency efforts should be focused in their community and what type of non-energy benefits connected to energy activities would be most highly valued by their community. A community energy planning process would allow the community to have a prominent role in making these types of energy decisions.

Co-Benefits of EE and RE Utilization

EE and RE projects should be implemented in a manner that maximizes co-benefits to communities. One of the primary co-benefits is the generation of economic opportunities that include ownership of RE infrastructure, jobs, research opportunities and entrepreneurship opportunities. Another co-benefit could be educational opportunities. Implementing EE and RE projects in a manner that maximizes these types of opportunities could help make urban areas in New Jersey centers of energy innovation. NJEJA also envisions a time when New Jersey cities will become known nation-wide for linking their public schools to the energy sector and producing young energy experts. Consulting community residents during a community energy planning process might be the best way to determine how to implement these projects so they will yield these valuable economic and educational opportunities.

Definition of Clean Energy

The definition of clean energy should include only solar power, wind power and small hydro projects. In past comments, we have argued against labeling nuclear power as clean energy due to the highly toxic waste product it produces.¹⁶ There are also safety and cost issues associated with nuclear power that could make its utilization problematic.¹⁷ NJEJA has discussed all of these concerns in prior comments and reiterate them here including the recommendation not to allow nuclear power to be considered clean energy.¹⁸

In past comments, NJEJA has also argued against incineration and natural gas being included as clean energy.¹⁹ Incineration, including that of biomass, should be rejected as clean at least partly due to the air pollution produced when it is employed.²⁰ Similarly, natural gas power plants can emit a significant amount of health harming local air pollution.²¹ The point and method of

¹⁶See New Jersey Environmental Justice Alliance, *Comments on New Jersey's Draft Energy Master Plan*, prepared by Nicky Sheats, at 7-8 (2008); New Jersey Environmental Justice Alliance, *New Jersey Environmental Justice Alliance Comments on the 2011 Draft New Jersey Energy Master Plan*, prepared by Nicky Sheats, at 1-2 (2011).

¹⁷ New Jersey Environmental Justice Alliance (2008), *supra* note 16, at 7; New Jersey Environmental Justice Alliance (2011), *supra* note 16, at 1-2.

¹⁸ New Jersey Environmental Justice Alliance (2008), *supra* note 16, at 7-8; New Jersey Environmental Justice Alliance (2011), *supra* note, 16 at 1-2.

¹⁹ New Jersey Environmental Justice Alliance (2011), *supra* note 16, at 1-4.

²⁰ See New Jersey Environmental Justice Alliance (2011), *supra* note 16, at 4-5 and footnotes contained therein for a short discussion of air pollution associated with incineration. For a discussion of biomass incineration see A. I. Baptista and K.K Amarnath, *Garbage, Power and Environmental Justice: The Clean Power Plan Rule*, 41(2) WILLIAM AND MARY ENVIRONMENTAL LAW AND POLICY REVIEW 403 (winter 2017).

²¹ See Sheats, *supra* note 8, at 392.



extraction of natural gas, especially if fracking is used, is also a source of concern because of potential damage it could cause to any community located where the natural gas is being removed from the earth.²²

Urban Community Energy Utilities

One idea that NJEJA introduced in prior comments²³ and that could be helpful in implementing a coherent urban energy strategy that, among other things, makes EE and RE accessible to EJ communities is that of urban community energy utilities. These non-profit entities would gather capital and make it accessible to urban communities by investing in local EE and RE projects. The utilities could be partly funded by the social benefits charge and, or, the clean energy fund. They could also conduct energy education and when combined with community energy planning could help make the vision of New Jersey urban areas as centers of energy expertise and innovation a reality. NJEJA was introduced to the idea by the Center for Earth, Energy and Democracy.²⁴

Conclusion

NJEJA would welcome the opportunity to discuss the ideas contained in these comments with BPU.

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²² See New Jersey Environmental Justice Alliance (2011), *supra* note 16, at 3.

²³ *Id.* at 6-7. In those 2001 comments we refer to “sustainable energy utilities” as opposed to urban community energy utilities.

²⁴ See note 15, *supra*.