



Docket ID Number EPA-HQ-OAR-2015-0734

Environmental, Protection Agency
EPA, Docket Center (EPA/DC)
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Pennsylvania Avenue, NW
Washington DC, 20460

December 15, 2015

Dear Administrator McCarthy:

We submit these comments to the Clean Energy Incentive Program (CEIP) Docket ID Number EPA-HQ-OAR-2015-0734 on behalf of the Center for Earth, Energy and Democracy (CEED).

We would like to stipulate, that unfortunately EPA has selected to fast track comments on the CEIP without ample notification to environmental justice advocates about the impending comment deadline. Given that the CEIP is the only component of the CPP that specifically targets benefits to EJ communities, active engagement with EJ advocates should have been a top priority for EPA. More robust and rigorous comments on each of the points outlined in this document will be forthcoming, but we were unable to develop these detailed comments given EPA's deadline and the multiplicity of demands already in place for EJ action on the CPP at the state and tribal level.

Our comments support and affirm the Principles of Environmental Justice, the Principles of Climate Justice, and a human rights framework that includes the American Declaration on the Rights and Duties of Man, the United Nations Declaration on the Rights of Indigenous Peoples, and the United Nations Guiding Principles on Internal Displacement.

Environmental justice and climate justice advocates recognize that climate change has already resulted in important environmental and health impacts. To what degree these will worsen depend upon how complex environmental processes and societal activities unfold. Climate change is impacting a wide range of conditions in our communities including human health, water availability, energy systems, food and agriculture, ecosystems, transportation and social networks. We also know that climate change impacts are interrelated with other environmental, social and economic conditions which create disproportionate vulnerabilities on Indigenous, communities of color, and low-income communities, herein referred to as environmental justice communities. These include demographic increases in younger and senior populations of color which present higher sensitivities to changes in air quality and exacerbated health concerns including high rates of asthma and respiratory illness in already high-risk populations; income disparity trends, as we have recently witnessed low-wage

workers experience the largest drop in wages which are impacted by increasing energy burdens at the household level; energy access as low and moderate-income households already pay a higher percentage of their income for energy and the energy affordability gaps total \$44,871,270,242 in the U.S.¹; affordable housing crises in communities across the U.S.²; and disparities in neighborhood social capital, as historically poor neighborhoods have been more vulnerable than affluent areas to the effects of reduced public spending.

These community differences are exacerbated by the disproportionate access to energy and environmental sustainability resources. The results are clear: some of the most severe climate change-related weather disasters in the U.S. have had a disproportionate impact on environmental justice communities. Clearly, many of the aspects of the current system have failed to meet the needs of vulnerable populations in the U.S. Already vulnerable communities pose a unique challenge for mitigating climate change, and deserve at least as much attention and concern as that given to energy sector actors and state regulatory bureaucracies.

General Comments on the CEIP and Environmental Justice

1. **Decoupling CEIP from trading-based compliance.** The inclusion of incentives for targeted investment in low-income energy efficiency was an addition to the Clean Power Plan final rule. While this presents an opportunity to redress the unequal access to public and private energy efficiency investments, and to reduce carbon emissions through demand side efficiency, it is of great concern that EPA has linked this incentive to participation in a carbon trading market. As EPA is fully aware, EJ advocates strongly oppose trading schemes. Nonetheless, EPA has selected to incentivize energy efficiency in low income communities solely through the matching allocations of either Emission Reduction Credits or Allowances. We call on the EPA and DOE to develop alternative incentive mechanisms that allow EJ communities and households to directly participate and access efficiency incentives outside a carbon trading process.
2. **Inclusion of race as well as income in adherence to EO 12898. EPA has limited CEIP incentives to income-based criteria, i.e. “low income”.** However, the premier federal document guiding environmental justice action is Executive Order 12898, which specifically “directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on *minority* and low-income populations, to the greatest extent practicable and permitted by law.” EO 12899 was written, and supported by substantial research that has found the overriding variable in unequal environmental conditions can be attributed to race. By solely utilizing income as the basis for energy efficiency incentives, EPA has violated both the intent and spirit of EO 12898 in addressing the disproportionate environmental harms

¹ Fisher, Colton and Sheehan. Energy Affordability Gap. Accessed on December 15, 2015 at

² According to the Center for Housing Policy, 15.6 percent of all U.S. households (18.1 million) were severely housing cost burdened (those that spend more than half of their income on housing costs) in 2012. Renter households are more than twice as likely to be housing cost burdened (24.7%) than owner households (10.5%) (Viveiros & Sturtevant, 2014)

racial inequality and energy efficiency to incorporate into the CEIP. Using the EJ frame, communities are overburdened because: 1) households pay a disproportionate share of household income on energy; 2) households do not have access, either because of affordability or lack of service provision, to energy efficiency services; 3) power plants are located in proximity to EJ communities and therefore are exposed to health impairing co-pollutants.

- 3. Definition of low-income.** A variety of low-income definitions are already used by DOE and other federal agencies. In addition to these individual household based definitions, EPA should develop, based on leading research energy vulnerability indices attributable to the community or neighborhood level. Implementation of past efficiency programs supported and incentivized neighborhood-level service provision. However, these efficiency services were targeted to middle income neighborhoods to the detriment of communities of color and low-income communities. This would not be out of past practice, as ARRA efficiency programs targeted blocks of households at the neighborhood level in middle-income neighborhoods for efficiency programs under the rationale of efficient service delivery. On this basis, low-income neighborhoods were excluded because: 1) low income housing have higher retrofit cost needs due to the lack of maintenance capital over time; 2) organizing block and neighborhood level households is more difficult given the social and economic needs of residents; 3) the bias in mainstream ESCOs that have no experience in working in low-income Native and communities of color. The EPA cannot underestimate practices of state and local agencies, as well as ESCOs that marginalize EJ communities. In some cases, EJ community exclusion was the result of discriminatory practices that targeted “efficiency ready” neighborhoods, which was code language for by-passing communities of color. In other cases, government, nonprofit and private businesses simply did not and do not have the experience, understanding or knowledge to address the needs of EJ community energy needs. If the intent of the CEIP is to effectively reduce energy use and carbon emissions in an equitable manner, its low-income criteria should incorporate a place-based set of criteria that addresses the reality that low-income community infrastructure requires such investment. The Center for Earth, Energy and Democracy has been working (with virtually no funds/resources) to develop a geographic-based energy vulnerability index. With some investment and support, such an index can be used by state and city governments to prioritize the most energy vulnerable communities. In this manner, incentives in low-income communities can be applied to a diversity of end users: single-family residences; multi-family residences; small business sector; nonprofit community building sector; schools and other community-serving public buildings.

4. **EPA and DOE, should substantially expand data collection on energy vulnerability.** At this time, the only data related to energy consumption that includes income-based data is the Residential Energy Consumption Survey. The lack of data and methodological

development in the field of equity and energy is abominable, and EPA should make the research agenda a priority. If energy equity received 5% of the research funds allocated to new technology development for the next stage nuclear, CCS, etc., rigorous and evidence-based methodologies would be in place to guide the CEIP. It is critical that EPA, along with other appropriate federal agencies such as DOE and HUD invest in the development of these methodologies.

5. **Split incentive problem does not guarantee benefits to low income households, a highly heterogeneous population with diverse needs in efficiency.** Because the CEIP is concerned with electricity efficiency, the structure of the program must address both the heterogeneous nature of low-income households and the specific issue of electricity demand. Low-income homeowners vs. low income renters; low-income renters in multifamily dwellings vs. single family detached housing; renters responsible for utility bills vs. those where landlords are responsible; low-income public subsidy households (Section 8) vs. public housing residents all represent distinct needs which cannot be addressed by a one standard CEIP structure, and which current utility-based efficiency programs cannot effectively address. Who pays for services has different goals and information from those that use the services. The efficiency problem is that there are different and distinct interests (split incentives) among the actors/users of energy efficiency. Landlords are concerned about minimizing their capital outlay, tenants are interested in minimizing rent and utility bills, and utilities are interested in access to market value ERCs irrespective of where they are generated. Incentivizing landlords or utilities does not guarantee benefits to low-income residents or that trickle-down energy efficiency benefits will be distributed to environmental justice community members. Low-income households may spend 10% of their total income on energy, and beyond 20% for very low-income households as compared to an average 3.3% for non-low-income households (Baxter, 1998; Kaiser and Pulsipher, 2006). Bird and Hernandez also find that, “(d)espite the fact that Section 8 is a very large component of residential housing, virtually nothing has been done to address tenant efficiency and weatherization in this context. As recently as 2008, the office of Housing and Urban Development did not even discuss the split incentive problem, yet they still spent over \$5 billion dollars in energy assistance that ultimately went to gas and electric utilities (U.S. Department of Housing and Urban Development, 2008b) (2012).”

6. **One hundred percent of the 300 million short ton CO2 emissions-equivalent matching pool among states participating in the CEIP should be allocated for energy efficiency and onsite renewables solely in environmental justice communities.** The CEIP is the singular program contained in the rule that has the potential to directly benefit environmental justice communities. The energy burden faced by many communities

across the country is considerable, and the likelihood of increased electricity rates in the future, will add to this burden. Between 2011 and 2014, the home energy affordability gap index increased considerably in nearly every region of the country, with a 16.3% increase in the U.S. as a whole. To use just one example, In 2014, in West Virginia alone, more than 57,000 households with an income at or below 50% of the Federal Poverty Level, faced a home energy burden of 40%; and more than 75,000 additional households with incomes between 50% and 100% of the Federal Poverty Level faced a home energy burden of 21%. Between 2013 and 2014, the heating season electric prices in West Virginia rose by 43.4%, and cooling season electric prices rose by 47.1%.³ A focus on onsite, distributed renewable energy generation within environmental justice communities, also has a more direct benefit on energy use reduction, decreased transmission line loss, household wealth building, local job creation, and in building climate and energy resiliency. Given this, and the opportunity the CPP and the CEIP present to mitigate these trends, one hundred percent of the matching pool in the CEIP should be allocated for energy efficiency and onsite distributed renewables in environmental justice communities.

7. For tribal nations, under which the Federal Implementation Plan will be applied, the CEIP must designate an independent organization, most preferably, a third-party nonprofit organization representing the tribal community to be the authority responsible for implementation of the CEIP. The generating station operators should not be granted authority for CEIP implementation or E&MV.

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³ Fisher, Sheehan & Colton, Home Energy Affordability Gap 2014.