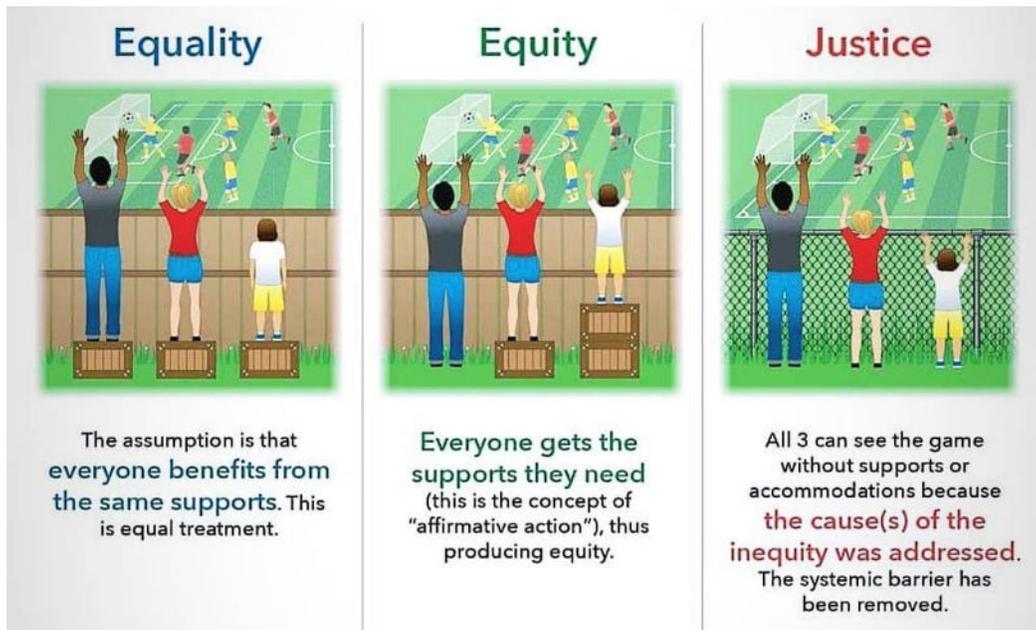


Environmental Justice at the Maryland Public Service Commission



What is Environmental Justice?

- Environmental Justice is defined as “equal protection from environmental and public health hazards for all people regardless of race, income, culture and social status. This encompasses the concept of fair and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of laws, regulations, and policies that impact the environment and public health.”¹

What is Energy Equity?

- Energy Equity is a developing concept but is generally understood to encompass the fair distribution of the benefits and burdens of energy production and consumption. This concept impacts utility regulation of planning, siting of energy generation, rate making, affordability, and public engagement.

How does the MD PSC intersect with Environmental Justice and Energy Equity?

¹ See *Learn About Environmental Justice* on the U.S. EPA, [https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#:~:text=Environmental%20justice%20\(EJ\)%20is%20the,environmental%20laws%2C%20regulations%20and%20policies](https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#:~:text=Environmental%20justice%20(EJ)%20is%20the,environmental%20laws%2C%20regulations%20and%20policies).

- The PSC rules on numerous natural resource-related issues that may impact the environment:
 - o Siting of electricity generating stations, high-voltage transmission lines, water supply and sewage line infrastructure, natural gas distribution and intrastate natural gas pipelines.
 - o Costs and recovery for utility environmental compliance activities.
- The PSC can use its regulatory authority to ensure that siting decisions do not disproportionately impact the environment of certain communities in light of the community's race, color, national origin, or income status.
- The PSC has comprehensive authority over how the costs and burdens of the utility distribution system are recovered from utility ratepayers. Energy equity is implicated in the consideration of:
 - o Class rate allocations, fixed charges, amortization of extraordinary utility costs (inter-generational issues), affordability programs, energy efficiency programs and system planning decisions.

What are some Environmental Justice and Energy Equity challenges in the utility space?^{2,3}

- Low-income communities and communities of color are typically unrepresented in energy planning and decision-making in PSC proceedings that determine utility investments or involve the siting of generation or transmission projects.
- Vulnerable communities are typically unaware of what the PSC does or how to participate in proceedings and voice their concerns. Furthermore, low-income and other vulnerable communities may lack sufficient resources to participate in certain PSC proceedings. Low-income communities and communities of color have the highest levels of energy burden (the percentage of household income that is spent on utility bills) and bills that are unaffordable.
- Vulnerable communities also have the highest levels of utility disconnections for non-payment.
- Low-income households are less likely to gain access to the benefits of distributed energy resources (such as solar, wind, battery storage, etc.) because of barriers to investment, such as high up-front capital costs, limited financing options, and lack of knowledge of the energy sector.
- Utility data collection and public reporting of service disconnections is very limited.

² See Advancing “Just Energy” in the South from Advancing Equity in Utility Regulation – GRID Modernization, November 2021

³ See A Consumer Advocate’s Perspective on Equity in Electric Regulatory Decision-Making from Advancing Equity in Utility Regulation – GRID Modernization, November 2021

Additional Information

Environmental Justice History within the U.S. and the State of Maryland

- 1969: Congress enacted the National Environmental Protection Act (NEPA), which requires federal agencies to analyze the environmental effects of proposed federal actions. While NEPA does not require federal agencies to consider environmental justice as part of the analysis, some agencies still do so in accordance with Executive Order 12898 (see below).⁴
- 1991: The first National People of Color Environmental Leadership Summit occurred and created a concrete outline of what Environmental Justice is and established the 17 principles of Environmental Justice.⁵
- 1994: President Bill Clinton signed Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”), directing executive departments and agencies to integrate environmental justice into their missions “to the greatest extent practicable and permitted by law.”⁶ The executive departments and agencies are charged with interpreting their authorizing statutes to determine whether and how environmental justice may be incorporated as a facet of program or activity implementation.⁷ The U.S. Environmental Protection Agency’s (EPA) Office of Environmental Justice coordinates the implementation of E.O. 12898.
- 2001: The Commission on Environmental Justice and Sustainable Communities (CEJSC) was established by Executive Order in Maryland and codified in Maryland law in 2003 in Md. Code Ann., Envir. Sec. 1-701. The CEJSC is tasked to examine environmental justice issues in communities across Maryland.⁸
- 2010: The Maryland Department of the Environment establishes an Environmental Justice workgroup in order to address EJ issues across the State.⁹
- 2021: President Joe Biden signed Executive Order No. 13990, which directs federal agencies to take action on issues and existing federal regulations that disproportionately harm communities of color and low income, and prioritizes environmental employment.¹⁰
- The Biden Administration is also exploring how to incorporate environmental justice analyses into NEPA’s required environmental review process, as well as exploring updates to E.O. 12898 to address environmental justice.¹¹

⁴ “Addressing Environmental Justice Through NEPA,” Legal Sidebar, Congressional Research Service, updated September 21, 2021, at 2.

⁵ See *30th Anniversary: The First National People of Color Environmental Leadership Summit* on the United Church of Christ Website <https://www.ucc.org/30th-anniversary-the-first-national-people-of-color-environmental-leadership-summit/>

⁶ See “Role of the U.S. Environmental Protection Agency in Environmental Justice,” <https://crsreports.congress.gov>.

⁷ *Id.*

⁸ See *What is Environmental Justice* on the Maryland Department of the Environment Website, <https://mde.maryland.gov/programs/crossmedia/EnvironmentalJustice/Pages/WhatisEJ.aspx>

⁹ *Id.*

¹⁰ See U.S. Presidential Executive Order No. 13990 *Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, January 20, 2021

¹¹ See “Addressing Environmental Justice Through NEPA,” Legal Sidebar, Congressional Research Service, updated September 21, 2021, at 2.

Environmental Justice Issues within the State of Maryland: Past and Present

- In 2009, Energy Answers International applied to build a 120 MW waste-to-energy power plant in Baltimore's Curtis Bay area, which had a predominantly minority population. The project was strongly opposed by community activists who felt it would lead to large amounts of air pollution in the area. ¹² In 2015, Baltimore City terminated its power purchase agreement with the plant. In 2016, the Commission revoked the project's CPCN after the developer discontinued construction for more than 18 months, and the facility's air quality permit expired.
- In Maryland, census tracts with higher proportions of non-white residents and people living in poverty were more likely to be closer to a toxic release inventory facility (a facility that releases toxic waste)¹³
- In 2015, the Maryland General Assembly passed House Bill 1087 and Senate Bill 398 which required the PSC to develop a pilot program for community solar. In 2017, the PSC established this pilot program that set aside capacity to help increase access to renewable energy for low-income residents in the state. This pilot has since been extended to 2024¹⁴
- In 2016, a concentrated animal feeding operation was approved for construction within a mile of various low-income neighborhoods in Salisbury, Maryland which had the potential to greatly pollute the air and groundwater of the area. The construction was postponed after citizen groups rallied and the local government halted construction.¹⁵
- In June 2016, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's Office of Civil Rights and the U.S. Environmental Protection Agency's External Civil Rights Compliance Office accepted a Title VI discrimination complaint, filed against the Commission, the Maryland Department of the Environment, and the Maryland Department of Natural Resources, in connection with the Commission's 2015 issuance of a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC. The complaint made allegations regarding the CPCN review process, the public engagement process, and the issuance of the CPCN. The complaint resulted in an informal resolution agreement among U.S. DOT, EPA and each of the State agencies named in the complaint. The Commission's agreement was signed in January 2019 and binds the Commission to certain actions related to public engagement, training, and organizational and regulatory improvements, including:
 - Providing more opportunities for meaningful public participation by communities impacted by a CPCN application to construct a qualifying fossil fuel-fired generating station.
 - Submitting rule changes to COMAR that improve providing notice to and facilitating community engagement in the CPCN application process for qualifying fossil fuel-fired generating stations.

¹² See Bloomberg CityLab article *Baltimore Scraps its Waste-to-Energy Plan* March 22, 2016

¹³ See "Being overburdened and medically underserved: assessment of this double disparity for populations in the state of Maryland" by Sacoby Wilson, et. al. 2014

¹⁴ See Maryland House Bill 683 and Senate Bill 520

¹⁵ See Socially Responsible Agriculture Project *Monica Brooks, Wicomico County, Maryland*

- Requiring the applicant to use EJSCREEN (EPA's mapping and screening tool that provides community environmental data and demographics) in their pre-construction process.
- Providing organization-wide Title VI training.
- Designating a Title VI non-discrimination coordinator, establishing a process for Title VI-related complaints, and posting this information to the Commission's main website: <https://www.psc.state.md.us/non-employee-discrimination-complaints-information/>
- Establishing procedures for providing access to PSC activities for persons with limited English proficiency and persons with disabilities, upon request.

The informal resolution agreement has been implemented through additions to the CPCN process adopted in RM 69, Commission wide Title VI training conducted on March 9, 2w021 and archived on the Commission web site for new employees, and appointment of Kimberly Shearin as our Title VI coordinator.