

January 21, 2016

EPA Docket Center  
Environmental Protection Agency, Mail Code: 28221T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
a-and-r-Docket@epa.gov

RE: U.S. Environmental Protection Agency Docket No. EPA-HQ-OAR-2015-0734

**Additional Comments from Advocates On Behalf of Low-Income Households  
on the EPA's Clean Energy Incentive Program**

The undersigned organizations, which include the National Consumer Law Center (NCLC); A World Institute for Sustainable Humanity (A W.I.S.H); Citizens Action Coalition of Indiana; Citizens Coalition of Cleveland, Ohio; The Community Action Partnership of Oregon; the Energy CENTS Coalition, Minnesota; The George Wiley Center, Rhode Island; Low-Income Energy Affordability Network (LEAN), Massachusetts; Public Citizen; the Public Utility Law Project; Texas Legal Services Center; the Unitarian Universalist Church of Tarpon Springs, Florida; the Virginia Citizens Consumer Council; and the Wisconsin Community Action Program Association (WISCAP), submit the following comments for your consideration. We offer these comments as a follow-up to those previously submitted to the EPA on December 15, 2015 by Public Citizen and signed by NCLC and other organizations. Thank you for your willingness to consider additional informal comments submitted after the December deadline, pursuant to your January 2016 notice.<sup>1</sup>

During November 2015, EPA sought comments on several aspects of the Clean Energy Investment Program (CEIP), under the following categories:

1. What should EPA consider when defining **criteria, terms and requirements** under the CEIP?
2. What should EPA consider regarding the **timing and distribution of allowances** under the CEIP?
3. What should EPA consider when **designing the mechanics** of the CEIP?

Under the first category, EPA asked for feedback on the following questions:

- What definition(s) of 'low-income community' should be required for eligible energy-efficiency (EE) projects?
- What criteria should be used to define eligible wind and solar projects, as well as eligible EE projects implemented in low-income communities? (e.g., by sector (residential, commercial, etc.) or by geography (where a project takes place and who benefits from it))
- What should be the evaluation, measurement and & verification (EM&V) requirements for eligible projects; the requirements for M&V reports of quantified megawatt-hour (MWh); and the requirements for verification reports from an independent verifier?

---

<sup>1</sup> Announcement to Stakeholders on the Clean Energy Incentive Program: Future Notice and Comment Opportunity (January 2016), <http://www.epa.gov/cleanpowerplan/ceip-future-notice-and-comment-opportunity-january-2016>.

- How could EPA set criteria for states, tribes and territories for whom goals have not yet been established in the final Clean Power Plan’s Emission Guidelines (EGs) to participate in the CEIP?

The undersigned organizations support low-income utility consumers through our advocacy work. We are non-profit and legal aid organizations that serve low-income households, including low-income ratepayers and utility consumers. These comments will focus on some of the questions raised by EPA, as indicated below.

## **Comments Regarding Stakeholder Involvement**

We commend the EPA on its efforts to educate and involve stakeholders through webinars, conference calls, in-person trainings, and the detailed information about the CPP and CEIP which is available on the EPA’s websites. Further, we acknowledge EPA’s efforts to consult with tribes during the rulemaking process. We urge EPA to continue these efforts and to encourage states to take similar steps as they develop their state plans. We believe EPA should request public comment on the adequacy of the engagement process as part of the final record of public comment that is submitted on public review of the final plan. We make the following recommendations for strengthening outreach, public meeting participation, transparency, and evaluation of outcomes.

### Outreach

- Direct outreach to community organizations in Environmental Justice communities and other communities who may benefit from CEIP programs through email, mail and other means.
- Outreach should include engaging the local community organizations and state agencies which deliver programs that assist low-income people with their energy and utility needs, including the weatherization assistance program and other programs to upgrade the energy efficiency of low income housing. In many states, these organizations have been proven to deliver significant energy savings cost-effectively. They also have experience in the verification of utility funded efficiency investments like those that may be expanded in the CEIP
- Include a wide range of interested state agencies in the planning process (including agencies that run state weatherization programs, public health departments, state energy offices, and public utility commissions).
- Direct these state agencies to reach out to their own stakeholders and constituencies.

### Public Meeting Participation

- States should, at a minimum, consult the Environmental Justice State Guidance for Clean Power Planning and the NEJAC Model Guidelines for Public Participation.<sup>2</sup>

---

<sup>2</sup> *Environmental Justice State Guidance -- How to Incorporate Equity & Justice Into Your State Clean Power Planning Approach* (January 2016) <http://www.ejleadershipforum.org/wp-content/uploads/2016/01/EJ-State-Guidance-final-V.2-Jan-13-20163.pdf>; *Model Guidelines for Public Participation; An Update to the 1996 NEJAC Model Plan for Public Participation; A Report of Recommendations of the National Environmental Justice Advisory Council to the U.S. Environmental Protection Agency* (January 25, 2013)

- States must create meaningful opportunities to receive input from stakeholders and engage in dialog throughout the planning and implementation process. Meaningful opportunities require extensive factual material and shared written documents. EPA itself has excelled in preparing briefing materials for multiple sectors of the industry and the public. States should be offered the templates and examples. State efforts to engage stakeholders should not be satisfied through meetings where state officials merely summarize or explain the CPP and CEIP for stakeholders, with limited opportunity for input.
- States should hold listening sessions (in person and remotely as needed) where stakeholders are invited to present testimony and ask questions of state officials and other interested parties – to be active participants in the sessions rather than an audience.
- States should actively solicit stakeholder input about the needs of environmental justice communities, low-income communities, and other concerns from a range of low-income utility customers. Stakeholders should be invited to identify the needs of their communities and provide suggestions for programs that will address the needs of these communities.
- Listening sessions and public meetings should include discussion of the practical aspects of implementing CEIP programs.

#### Transparency

- Each state should maintain a state CPP website with information such as notices of future meetings, links to materials and comments from past meetings, and a sign-up for email notifications.
- States should make all comments easily accessible to stakeholders and the public.

#### Evaluation of Outcomes

- Evaluate number of participants from EJ communities, low-income communities, and other ratepayer interests. Compare their level of input with that of utility and business interests. States that have conducted sessions but have received comments from a disproportionately small number of stakeholders should be encouraged to renew their outreach efforts for upcoming meetings.

We also wish to reiterate our support for the suggestion raised in the December 15 comments, to allocate funding to facilitate stakeholder engagement. Public funding, such as intervenor funds, would expand and strengthen stakeholder engagement in the state planning processes, many of which are already underway.

#### **What should EPA consider when defining criteria, terms and requirements under the CEIP?**

---

<http://www3.epa.gov/environmentaljustice/resources/publications/nejac/recommendations-model-guide-pp-2013.pdf>.

What definition(s) of ‘low-income community’ should be required for eligible energy-efficiency (EE) projects?

In order to support the low-income consumers who are the intended beneficiaries of the CEIP, “low-income community” should be defined broadly to include the following consumers:

A. Low-income Communities with Environmental Justice Concerns

We would like to clarify that, while most low-income ratepayers and tenants could benefit from energy efficiency improvements across the full range of housing types, we urge the EPA to prioritize low-income communities (including rural, urban and tribal communities<sup>3</sup>) which have historically been burdened by proximity to pollution sources and emissions from EGUs. Low-income communities that have borne this disproportionate burden, particularly communities that are home to large percentages of people of color, could be prioritized and CEIP bonus credits within each state could be assigned to these projects first.<sup>4</sup> For instance, these priority projects could include EE measures for affordable housing in communities in which household income averages below 60% of the area median income (AMI) and which also meet the criteria set forth in the EPA’s Environmental Justice screening tool or other indicia of environmental justice concerns.

B. Other Low-Income Communities

Low-income communities without a documented history of environmental justice concerns could be identified by reference to AMI or to the federal poverty level (FPL). As we suggested in the December 15, 2015 comments, states could use either up to 80% of AMI or 200% of the FPL as criteria for identifying these communities, and could adopt the method that best aligns with income guidelines used to determine eligibility for similar programs such as weatherization assistance or the Low-income Home Energy Assistance Program (LIHEAP). In some areas, a threshold of 60% AMI may be more equitable, depending on the needs of the community.

C. Low-Income Residents of Moderate-Income Communities

Low-income households may live in single family or multifamily housing located in moderate-income or affluent communities. These individuals and families could be identified based on household income of up to 60% of AMI or 200% of FPL. While these households should be considered eligible, we urge the EPA to ensure that states give priority first to the income-eligible households living in Environmental Justice communities, and next to income eligible households located in low-income communities, as described above.

D. Other Economic and Environmental Concerns

---

<sup>3</sup> By making these comments about low-income communities, we do not intend in any way to exclude any low-income households, regardless of where they may be located. Rather, we are simply underlining the benefits and importance of serving those living in low-income communities which have historically been unduly burdened.

<sup>4</sup> This prioritization would be consistent with ongoing EPA and national efforts to address environmental justice concerns. See Executive Order 12898, 59 Fed. Reg. 7629 (February 16, 1994).

In addition, while the CEIP and CPP are anticipated to bring wide-ranging benefits in increased energy efficiency and reduced carbon output, we note that these changes are likely to have certain adverse impacts on particular communities. For instance, we recognize that the shift away from coal-based power generation has broad benefits for the country but may exacerbate the loss of jobs in a declining coal industry in states such as West Virginia and Kentucky.<sup>5</sup> We urge the EPA to consult with stakeholders in these disadvantaged communities and encourage states to think creatively about how new and expanded EE programs could be designed to help displaced workers through job creation in the EE field as well as residential EE benefits.

What criteria should be used to define eligible wind and solar projects, as well as eligible EE projects implemented in low-income communities? (e.g., by sector (residential, commercial, etc.) or by geography (where a project takes place and who benefits from it))

As stated in the December 15 comments submitted previously, residential EE projects clearly should qualify for CEIP credits. These EE projects should include proven techniques that improve efficiency. We urge caution before including incentives for “behavioral” energy efficiency programs, since low-income consumers and people of color already tend to be more efficient users of electricity and natural gas, and savings from these behavioral programs tend to be small.<sup>6</sup>

Further, low-income households are more likely to face challenges when paying for basic utility services. EE projects designed to serve low-income communities should not be funded by low-income ratepayers, as these programs are intended to benefit these ratepayers in addition to serving the overall goal of emissions reduction.

Geography should not be used as the sole factor to determine project eligibility. Rather, geography is of high importance, but should be considered in light of the purpose of the project and the potential beneficiaries. For instance, eligible renewable energy projects that benefit a community, such as a community solar installation that provides power to a building of affordable housing units, should qualify based on the location and income of the residents who are served by the project rather than solely considering the location of the solar installation itself. Conversely, a commercial or industrial project that happens to be located in a low-income EJ community should not be presumed an eligible project unless it can be clearly demonstrated that community residents would receive a significant benefit.

---

<sup>5</sup> See, e.g., *Here's why Central Appalachia's coal industry is dying*, Wash. Post, Nov. 4, 2013, <https://www.washingtonpost.com/news/wonk/wp/2013/11/04/heres-why-central-appalachias-coal-industry-is-dying/>.

<sup>6</sup> See National Consumer Law Center, *Utility Rate Design: High Utility Fixed Charges Harm Low Income, Elders and Households of Color*, <http://www.nclc.org/energy-utilities-communications/utility-rate-design.html> (“National Consumer Law Center's research and analysis, based on the 2009 U.S. Energy Information Administration's Residential Energy Consumption Survey (the latest data available), shows that, on average, households with lower incomes, and who are African American, Latino, or older, use less electricity and natural gas than higher-income households.”) (last visited Jan. 4, 2016).

What should be the evaluation, measurement and & verification (EM&V) requirements for eligible projects; the requirements for M&V reports of quantified megawatt-hour (MWh); and the requirements for verification reports from an independent verifier?

Generally, we note that states should be broadly encouraged to take advantage of the CEIP program to assist their economically vulnerable residents. EM&V requirements should therefore be flexible and not create a disincentive to state participation in the entire CEIP, while still preserving the goal of reducing carbon emissions. Where a state chooses to implement a mass-based approach for CPP compliance purposes, it may not be feasible for that state to adopt an EM&V system primarily to evaluate CEIP projects. We urge the EPA to create flexible verification standards that do not create a disincentive for states, including states with mass-based standards.

We note that local DOE-funded weatherization agencies have extensive experience in EM&V, including in situations where the whole-house work is funded by multiple sources (e.g., DOE and utility programs). Therefore, we encourage EPA to make sure that any EM&V rules or regime will readily mesh with existing EM&V protocols that low-income agencies use.

Thank you for your attention to these comments, and for your ongoing efforts to meet the needs of low-income communities and to support strong stakeholder participation. We note that we are also supportive of the views outlined by the Consumer and Social Justice Advocates in their CEIP comments and Guiding Principles. If you have questions about these comments, please contact Jenifer Bosco at [jbosco@nclc.org](mailto:jbosco@nclc.org) or Charlie Harak at [charak@nclc.org](mailto:charak@nclc.org).