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Systematic Assessment for how the NRC Addresses Environmental Justice in its Programs, Policies, and Activities

Comment On: NRC-2021-0137-0001

Systematic Assessment for How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities

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General Comment

Please see attached document.

Attachments

Comment on the Systematic Assessment for How the NRC Addresses Environmental Justice (Docket ID-NRC-2021-0137) - Final

October 19, 2021

U.S. Nuclear Regulatory Commission

Washington, DC 20555

Subject: Comment from the Breakthrough Institute to the U.S. Nuclear Regulatory Commission in response to the Systematic Assessment for How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities, (Docket ID: NRC-2021-0137).

Dear Environmental Justice Review Team,

In the context of a warming world and air pollution impacts from traditional thermal power plants, nuclear energy can be considered a key component of the national environmental justice agenda. The Nuclear Regulatory Commission (NRC) plays a critical role within this process by conducting licensing reviews and oversight activities of nuclear projects.

Traditionally, conversations around environmental justice and the NRC have focused upon a greater need for “procedural justice”.¹ Such efforts have endeavored to expand equitable access to the decision-making and stakeholder engagement processes conducted as part of project licensing and approval, particularly through environmental reviews in accordance with the National Environmental Policy Act (NEPA) of 1969.² We agree that the NRC has responsibilities to advance procedural justice by making its activities more open and accessible. For instance, the NRC can further strengthen public comfort with an understanding of the licensing process via proactive outreach and education on topics within its statutory mission.

However, we also believe that the NRC carries a responsibility to advance “distributive justice” using approaches that improve the ability of marginalized environmental justice communities to more fairly share in the benefits of projects

¹ Good Energy Collective. “Comments on the U.S. Nuclear Regulatory Commission’s Systematic Assessment for How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities (Docket ID NRC-2021-0137).” Accessed October 14, 2021. <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML21224A065>.

² LII / Legal Information Institute. “42 U.S. Code § 4331 - Congressional Declaration of National Environmental Policy.” Accessed October 13, 2021. <https://www.law.cornell.edu/uscode/text/42/4331>.

under review and enjoy equitable access to such opportunities. It is an injustice for local stakeholders to be excluded from benefiting from the many economic and environmental opportunities that arise from license applications under the NRC's authority to review.

Such benefits can be extensive. They include the substantial creation of high-paying, well-educated, long-term jobs in a community,³ in addition to economic benefits such as increased local spending and a strengthened tax base. Nuclear generation stations additionally produce considerable environmental benefits from the potential displacement or avoidance of polluting sources of power.⁴ Nuclear power does not produce particulate pollution or emit SO_x, NO_x, and greenhouse gases like carbon dioxide or methane. New reactors can also offer “just transition” community benefits through the potential re-purposing of legacy thermal power plant infrastructure, ensuring stable local employment and economic activity.

An excessive regulatory burden can cause environmental injustice if regulation becomes an obstacle preventing positive projects from moving forward or if reviews cannot be completed in a timely manner. This is a matter of particularly pressing concern given the potential need for the Commission to efficiently review dozens of new reactor designs and review significantly increased volumes of license applications as nuclear technology continues to evolve. Given the collective national importance of reducing pollution, increasing clean energy production, and boosting US energy independence, overly burdensome barriers to project licensing and approval can produce important environmental costs of their own. Furthermore, considering the potential local economic benefits for many communities, particularly historically marginalized environmental justice communities, significant amounts of time for a project to come online—and especially abandoned projects—can perpetuate underdevelopment and inequality.

Recommendations:

1. We believe that environmental justice benefits and long-term community benefits should be accounted for when NRC performs environmental reviews. This is consistent with the NRC's statutory responsibilities under NEPA, which among its foundational objectives aims to “stimulate the health and

³ 2020 U.S. Energy and Employment Report (USEER). “Wage Report 2021.” Accessed October 14, 2021. <https://www.usenergyjobs.org/wages>.

⁴ Kharecha, Pushker A., and James E. Hansen. “Prevented Mortality and Greenhouse Gas Emissions from Historical and Projected Nuclear Power.” *Environmental Science & Technology* 47, no. 9 (May 7, 2013): 4889–95. <https://doi.org/10.1021/es3051197>.

welfare of man” and to “fulfill the social, economic, and other requirements of present and future generations of Americans” in conjunction with promoting environmental protection.⁵

Projects related to nuclear reactors, materials, and spent fuel are associated with not just potential long-term consequences, but also significant long-term benefits. In addition to assessing risks and impacts during environmental reviews, the NRC should also develop a standard procedure to evaluate and measure such environmental and community benefits. NRC programs, policies, and activities should furthermore consider disparate negative environmental, economic, and social impacts that may be associated with a failure to move forward with a project.

NRC licensing and regulatory reviews should therefore also independently consider whether minority and low-income communities have received equitable access to benefits of projects including but not limited to increased reliability of power supply, local employment, local tax revenue, reduced particulate pollution and emissions of SO_x, NO_x, and CO₂, improved transportation infrastructure, lower ratepayer costs, and similar improvements. NRC review processes should also solicit stakeholder input regarding fair and equitable access to such benefits.

2. We recommend that the NRC’s commitment to environmental justice in the licensing and approval process should be foundationally grounded in scientific analysis and assessment. Such policies and practices should seek to objectively evaluate and quantify potential environmental harms upon and benefits for environmental justice communities, both in accordance with the NRC’s established obligations and in response to public consultation and feedback. These policies for impact assessment should also be consistent with standards applied to other technologies and infrastructure.
3. NRC should, at their cost, not at a community’s or developers’ cost, provide representatives to local community engagement meetings when someone is considering a project near that community. This outreach should begin upon a community’s or developer’s request, and well before an actual operating license application is submitted for review. We point out that it would be very beneficial for NRC representatives to attend such meetings, providing an independent viewpoint, apart from the developer, to inform the public about NRC programs, policies, and activities. Direct NRC participation in

⁵ LII / Legal Information Institute. “42 U.S. Code § 4331 - Congressional Declaration of National Environmental Policy.” Accessed October 13, 2021. <https://www.law.cornell.edu/uscode/text/42/4331>.

community engagement meetings would powerfully enhance procedural justice by allowing participants to interact directly with NRC representatives, while also providing the NRC with better public feedback and fostering improved general understanding of the NRC and its mission.

4. As part of stakeholder processes, the NRC should, at their cost, not at a community's or developers' cost, make substantial efforts to combat misinformation and misperceptions by responding to incorrect statements and referring participants to reliable information. This is an important role of the NRC in accordance with its mission and values,⁶ which include maintaining openness and transparency with regards to its programs, policies, and activities. Additionally, perceptions of adverse impacts related to projects or unsatisfactory engagement carry the potential to affect public trust in the NRC, which is critical for its responsibilities in advancing environmental justice. Misinformation about radiation risks may lead to negative local economic effects such as reduced tourism or lowered property values, and community members might feel unneeded anxiety or resentment. We support one solution proposed by the Nuclear Innovation Alliance's comment, in which resources might be made fairly available to communities to fund or support expert consultation.⁷ The NRC should support the cost of such an initiative, rather than developers or communities.
5. In response to the NRC public meeting on environmental justice held on 27 September 2021,⁸ during which the facilitator controversially cut off a participant mid-speech in order to adhere to the meeting schedule, we recommend that the NRC establish a code of conduct for meetings and publicize these guidelines in advance of future meetings. This can guarantee that all participants enjoy equal treatment by facilitators and are given equal time to contribute comments and feedback. This will also ensure that participants are aware of timing constraints and understand expectations in advance regarding the possibility that they may be asked to conclude their comment in order to keep the meeting on schedule. The NRC should remain

⁶ NRC Web. "Values." Accessed October 14, 2021. <https://www.nrc.gov/about-nrc/values.html>.

⁷ Nuclear Innovation Alliance. "Nuclear Innovation Alliance Comments on the U.S. Nuclear Regulatory Commission's Systematic Assessment for How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities (Docket ID NRC-2021-0137)." Accessed October 14, 2021. <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML21267A492>

⁸ NRC Web. "Environmental Justice and the NRC. Audio of the September 27, 2021, public Listening Session. Accessed October 14, 2021. <https://www.nrc.gov/about-nrc/regulatory/licensing/environmental-justice.html>.

open to further feedback on these rules of conduct and revise them as needed according to participant input.

6. One major theme of recent discussions surrounding the NRC's environmental justice obligations centers upon the rights of Native American Tribes in the licensing and approval process given the requirement for federally mandated Tribal consultation under NEPA. In particular, Tribes without federal recognition often do not possess the same ability to provide formal input and feedback. This is a fraught challenge that arguably has its roots in much broader issues, such as varying degrees of federal and state recognition of Indian Tribes, the difficulty of substantiating historic claims on ancestral lands and sites to the satisfaction of legal standards as required by current legislation, and the considerable individual differences in treaty rights, reservation status, and government-to-government relations across Tribes.

These issues are serious and do demand major reforms, with many Tribes having lobbied for decades, even a century or more, for federal recognition and with many others having lost recognition status due to federal policy changes. We express our belief that Tribal sovereignty issues need to be primarily addressed at the executive and congressional level. We recommend that improved, uniform standards for Tribal consultation should apply consistently to all energy and resource development rather than being litigated through NRC licensing.

7. We agree with a number of constructive procedural recommendations made in the Good Energy Collective's letter.⁹
 - a. The NRC should provide more advance notice in announcing scoping meetings, at a minimum of 3 weeks before the date of the meeting. The NRC should also ensure that it is proactively providing information about these upcoming scoping meetings to the local community, and not only publish this information on its website.
 - b. As suggested by Good Energy Collective, stakeholder access to meetings should be maximized by holding meetings in both mornings and evenings, and on multiple days. The organizers should also make efforts to improve public access to meetings via teleconferencing, virtual video conferencing, recording and online distribution of proceedings, and similar means. The insufficiency of current

⁹ Good Energy Collective. "Comments on the U.S. Nuclear Regulatory Commission's Systematic Assessment for How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities (Docket ID NRC-2021-0137)." Accessed October 14, 2021. <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML21224A065>.

accommodations for accessibility were abundantly demonstrated by the NRC public meeting on environmental justice held on 27 September 2021, where attendees had to navigate a confusing process to call into the meeting's audio feed by phone and struggled with unclear directions for unmuting their line.¹⁰ Audio should ideally be available to participants joining via an internet connection, not just phone participants. Meanwhile clear directions should be provided multiple times throughout the meeting in both the meeting slides and vocally by meeting facilitators.

- c. The NRC should increase the staffing capacity of the NRC Office of Small Business and Civil Rights to strengthen the office's ability to perform outreach through the Outreach and Compliance Coordination Program. Congress should directly fund this activity.
 - d. The NRC should, at their cost, not at a community's or developers' cost, make greater efforts to create concise plain language summaries of documents released as part of the licensing process, such as environmental impact statements, as required by the Plain Writing Act.¹¹ The NRC should prioritize promptness in soliciting comments from applicants on plain language summary documents once they drafted, making needed changes, and releasing summary documents to the public, so as to avoid unnecessary delays and associated costs. The NRC should then also hold meetings with local communities in order to explain its licensing actions and decisions.
8. Ultimately, environmental justice is and must be a whole-of-government approach. This was highlighted in the public Listening Session and Round Table Discussion held on 27 September 2021, in which a number of commenters highlighted important issues that lie beyond the NRC's statutory authority.¹²

¹⁰ NRC Web. "Environmental Justice and the NRC. Audio of the September 27, 2021, public Listening Session." Accessed October 14, 2021. <https://www.nrc.gov/about-nrc/regulatory/licensing/environmental-justice.html>.

¹¹ NRC Web. "Plain Writing at the NRC." Accessed October 18, 2021. <https://www.nrc.gov/public-involve/open/plain-writing.html>

¹² NRC Web. "Environmental Justice and the NRC. Audio of the September 27, 2021, public Round Table Discussion." Accessed October 14, 2021. <https://www.nrc.gov/about-nrc/regulatory/licensing/environmental-justice.html>.

We recommend that the NRC develop a strategic plan for working together with other federal agencies including but not limited to the Department of Energy, the Environmental Protection Agency (EPA), and the Office of Surface Mining Reclamation and Enforcement, with the NRC providing technical and scientific assistance to other federal institutions tasked with addressing outstanding environmental justice obligations around existing nuclear sites, unremediated mines and tailings, and associated health and environmental impacts. Recognizing that such initiatives do not traditionally lie within the NRC's purview today, many of these issues originated under the direction of the NRC's predecessor, the Atomic Energy Commission. As such, strengthening mechanisms for interagency cooperation can help the NRC and the federal government as a whole address historic environmental justice obligations associated with nuclear materials and facilities.

Many of the recommendations in this Comment, such as suggestions regarding optimal practices for holding public meetings and conducting proactive outreach, are just as relevant to other federal agencies, and the NRC should leverage the experiences of other federal agencies like the EPA as other federal entities also look at incorporating environmental justice into their processes.

9. Finally, the NRC should prioritize streamlining of the licensing and review process, to ensure that excessive regulatory burdens do not present unneeded obstacles to potential projects. NRC programs, policies, and activities can be designed to maximize safety, improve stakeholder input, encourage best environmental practices, and fulfill all other obligations of the Commission while also allowing for an efficient review process that minimizes unnecessary costs and delays. Ensuring timely licensing and review will in fact benefit all stakeholders by facilitating consultation and feedback.

In particular, given the arrival of a new generation of nuclear reactor technologies that employ radically different, inherently safe design principles from previous generations of nuclear reactors, the NRC should not use regulatory standards intended for large light-water reactors to evaluate new technologies with entirely separate fundamental designs, as detailed in the Joint NGO Comments on Part 53 (ADAMS Accession No. ML21207A223).¹³

¹³ The Breakthrough Institute, ClearPath, Good Energy Collective, Nuclear Innovation Alliance, and Third Way. "Joint NGO Comments on Preliminary Proposed Rule Language, 'Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors' [Regulation Identifier Number RIN-3150-AK31; Docket ID NRC-2019-0062]." Accessed October 14, 2021. <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML21207A223>

The NRC must incorporate environmental justice into its mission. In following through on such commitments, the NRC should simultaneously avoid overcomplicating the review process, imposing burdensome additional costs, or lengthening timelines for review. Protracted regulatory processes place a heavy burden on community participation and engagement, as pointed out in the comment submitted by Nuclear Innovation Alliance (ADAMS Accession No. ML21267A492).¹⁴ We also point out that overly stringent regulatory requirements may disproportionately increase the costs of projects in rural or underserved communities, leading to unequal access to the opportunities that potential projects might offer. Meanwhile, a regulatory approach that favors lower project costs may incentivize more projects in remote and/or environmental justice communities that are traditionally served by smaller utility providers.

Conclusion

We thank the NRC for taking the effort to review its environmental justice practices and applaud its proactive attention towards advancing equity and inclusion. Such institutional policies are key not only for strengthening public trust in the NRC's regulatory role and for facilitating community and stakeholder feedback throughout the project review and approval process, but also for ensuring a more fair and just distribution of the economic, social, and environmental benefits that potential sites and facilities can offer. We look forward to further discussions with the NRC around these important environmental justice considerations.

If you have any questions regarding this comment, please contact Seaver Wang (seaver@thebreakthrough.org).

Sincerely,
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¹⁴ Nuclear Innovation Alliance. "Nuclear Innovation Alliance Comments on the U.S. Nuclear Regulatory Commission's Systematic Assessment for How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities (Docket ID NRC-2021-0137)." Accessed October 14, 2021. <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML21267A492>