

CPUC Environmental and Social Justice Action Plan 2.0
Public Comment Submission by The Utility Reform Network
November 24, 2021

I. Introduction

The Utility Reform Network (TURN) appreciates the opportunity to comment on the Environmental and Social Justice Action Plan 2.0 (ESJ Action Plan) of the California Public Utilities Commission (Commission). Our comments are divided into two sections. In the first section, TURN outlines suggestions for creating a more just and inclusive process at the Commission as related specifically to the ESJ Action Plan. Second, we provide goal-specific suggestions and comments on the nine goals outlined in the ESJ Action Plan as it relates to TURN's primary work and engagement at the Commission.

II. **If the Commission Truly Wants an Inclusive Process for Updating the ESJ Action Plan, It Must Ensure an Open and Respectful Public Participation Process with an Opportunity for Contributors to Receive Compensation.**

TURN approaches our comments to the ESJ Action Plan as a vehicle to support the Commission in its efforts to achieve its goals with respect to environmental justice and equity. Key to achieving these ambitious goals is creating just and inclusive processes at the Commission. The ESJ Action Plan process itself speaks to many of the improvements that the Commission could implement to increase inclusivity, equity, and justice in many aspects of its work.

A. **Equity and Institutional Environmental Justice Processes in Context**

There is a long history of halfhearted social justice efforts within California's public institutions with good intentions but negligible impact on breaking down long standing imbedded structural racism. Such efforts may provide an opportunity for less committed and resolved organizations and institutions to "check the box" of having done something, however cursory. Those of us who have been part of numerous efforts to advance social justice, including racial justice specifically, have learned lessons and become keenly aware of missteps and road signs along the way. Many of these efforts have had the detrimental effect of further entrenching inequity and thwarting justice. TURN implores the Commission to dig deep and find the resolve to act with courage and conviction; to navigate this terrain emboldened to affirmatively address and redress historical patterns of discrimination, inequity, and injustice.

TURN's goal is to support the Commission's efforts and ensure that the actions taken through the ESJ Action Plan deliver concrete and transformative public benefits that advance justice and equity. We have no interest in a plan that looks good on paper but fails to impact the Commission's decisions and, therefore, fails to disrupt utility regulation business-as-usual. TURN is hopeful that the Commission shares our disdain for meaningless actions that yield self-congratulatory press releases but nothing of substance. As stated on page 15 of the ESJ Action Plan document, **"the murder of George Floyd in the summer of 2020 centered the Black Lives**

Matter movement in the consciousness of our society and created a sense of urgency and necessity within the CPUC to embody diversity, equity, and inclusion.” TURN appreciates that the Commission might acknowledge and act to dismantle the oppressive processes and procedures that have been pervasive within the institution. Although any time would have been the right time to dismantle structural racism, we are encouraged that the CPUC faces a renewed moral imperative to take real action now.

B. Public Participation Concerns

While the ESJ Action Plan welcomes the comments of community groups, partners and impacted community members, the failure of the Commission to appropriately structure or fund the process to ensure that the valued review, comment and engagement of community-based organizations, environmental justice organizations and others’ is properly compensated sets up a flawed process. The ability to engage in such an important and potentially impactful process comes at a resource cost—one in which community groups may not be able to afford to participate, due to the very structures that we are hoping to dismantle through the development of an improved ESJ Action Plan at the Commission.

More plainly stated, asking groups to engage in these processes without compensation is business-as-usual. Embarking on this process without properly acknowledging the burden to participants sends a signal to Community Based Organizations (CBO’s) that their valuable thoughts, ideas, and engagement is not worth compensation. The CPUC is no stranger to the importance of compensation for work by organizations that contribute to its decisions through participation in formal proceedings. It should recognize the same need here, despite the different nature of the work, and value the time and expertise of organizations that contribute to the ESJ Action Plan updates.

The ESJ Action Plan process is further undermined by the lack of institutionalization. ESJ Action Plan stakeholders are asked to participate in what may amount to no more than a “pet project” of a subset of the Commissioners. At this time there is no formal guarantee that this process will continue once the supporting Commissioners, who set the process in motion, leave the Commission. This lack of institutionalization not only continues to undermine the integrity of the process, but it also telegraphs clearly to those of us concerned with the equity impacts of the Commission’s actions and decisions that this process is not valued and will have no real or lasting impact. TURN recommends strongly that the Commission properly value the ESJ Action Plan and institutionalize this process by taking the following steps:

1. Open a rulemaking for the ESJ Action Plan
2. Provide compensation to participating organizations

Anything short of addressing the ephemeral condition of the current ESJ Action Plan process in these ways threatens to render the process meaningless and may cost the Commission the political goodwill of organizations that have already invested in this process.

1. ESJ Action Plan Rulemaking

TURN recommends that the Commission open a rulemaking to further develop the framework begun through the ESJ Action Plan for addressing the environmental and social justice impacts of the Commission's actions. By opening a proceeding, the Commission will elevate the significance of this work, demonstrating that counteracting systemic racism in its processes and inequitable impacts of its decisions is a central interest of the Commission. A Rulemaking creates an institutionalized mechanism for following through on the 9 overarching goals of the ESJ Action Plan. Opening a rulemaking will also allow organizations already engaged in other Commission business to participate more fully by allowing groups to access Intervenor Compensation for their expertise and engagement.

TURN recently heard from at least one organization who regularly participates in Commission business, that their organization was unable to take part in the ESJ Action Plan process due to a lack of staff bandwidth. Without access to Intervenor Compensation, this important voice will not be heard by the Commission as part of this project. Intervenor Compensation is one of the most important tools available for the Commission to signal its commitment to the issues, goals of, and, to the impact it hopes to make with the ESJ Action Plan.

2. Provide Compensation to Participating Organizations

TURN recommends two approaches to providing compensation to Community Based Organizations that participate in the ESJ Action Plan update processes. First, the Commission should make this work eligible for intervenor compensation by either adopting the ESJ Action Plan through a formal resolution adopted by the full Commission. Acting on the ESJ Action Plan by Commission resolution will make it possible for eligible participants to seek compensation for contributing to the update process. TURN urges the Commission to immediately announce that it intends to adopt the ESJ Action Plan 2.0 update through a formal resolution so that this work is eligible for intervenor compensation. Alternatively, the Commission could situate the ESJ Action Plan update process within a new rulemaking proceeding, as discussed above, which would also open the door to intervenor compensation.

Second, the Commission should create a grant program to provide funding to organizations that are ineligible for intervenor compensation or require upfront funding to participate. Suffice it to say, the intervenor compensation program can only address some of the barriers community groups face in participating in CPUC proceedings, due in part to the statutory requirements of the program. Some groups do not meet the "customer status" requirements for intervenor compensation, despite advocating for the well-being of individuals and communities, which includes access to essential utility services. Some groups operating on a shoestring budget require upfront funding. They may be so resource-constrained that they cannot devote a person

to this work without paying someone else to cover the organization's day-to-day work. Other groups may contribute their time and insights in ways that make it difficult to demonstrate "substantial contribution," as defined by the Intervenor Compensation program, such as primarily oral participation or other informal participation. If the Commission is serious about wanting community input, not just input from groups already active before the Commission through their formal work in proceedings, the Commission must put its money where its mouth is and provide compensation for groups that choose to engage at the Commission in different, yet valuable capacities.

TURN reminds the Commission of the historical context that the Commission risks perpetuating by its actions to date: For far too long black and brown people have been made to give their time, talent, and labor to build this country and advance civil rights, equity, and social justice without proper compensation. This practice must stop. The Commission should move swiftly to identify funds to ensure that Community Based Organizations that engage in the ESJ Action Plan can receive compensation for their contributions. Where the intervenor compensation program falls short – as will be the case here – compensation should be achieved through a grant-making process.

C. Repair the Consequences of the Damaging ESJ Action Plan Workshop

If the Commission truly values participation by the communities that should be at the center of the ESJ Action Plan, the Commission must also undo the damage done by the ESJ Action Plan workshops.

The Commission held a WebEx workshop at 10 am on November 3, 2021, to solicit public input on the draft ESJ Action Plan 2.0. This workshop was plagued by a fundamental flaw: the Webex settings permitted only CPUC staff to view the presentation and limited opportunities for the community to be heard. What happened next must be given thoughtful consideration by the organizers of that event and CPUC staff participating in the ESJ Action Plan adoption process. The WebEx settings that allowed only Commission staff to participate fully in the originally scheduled webinar could have simply been a technical glitch, easy to move forward from by simply postponing the webinar immediately. However, this is not what happened. The organizers continued the webinar because they did not want to "waste the Commissioner's time." The same consideration to the public's time should be afforded, especially on matters related to Environmental and Social Justice, where community members have been historically excluded through overt and covert grounds, such as "technical glitches."

By moving forward despite the inability of community groups to fully participate, CPUC staff devalued the participating public's time and insights. The time and convenience of well-paid public servants should not take precedence over that of the dozens of target audience members present for the webinar. The reasoning felt like a slap in the face to the over 100 participants who took time out of their busy schedules to share their wisdom with the Commission—not to mention those disheartened by the technical issues who simply did not call in when the link to

the WebEx platform did not function. Unfortunately, this action compromised the CPUC's credibility and significantly undermined the integrity of this process.

It must also be noted that the subsequent ESJ Action Plan workshop scheduled for Wednesday, November 10th at 10am was absent of any appointed Commissioners. Groups attending this workshop for the second time were not able to address Commissioners directly on their concerns for the ESJ Action Plan broadly nor the public participation process most specifically. This remains an important concern as many groups participating are doing so with limited resource and without – at least thus far -- the potential of financial support through the intervenor compensation program or any Commission funded scheme to recover cost. With this being the case, some groups may or may not have had the opportunity to join a second meeting and may not be well positioned to use additional resources to make formal written comments on the ESJ Action Plan.

Going forward, the Commission should make amends for belittling the time and value of community group participants during the workshop process. It should also elevate the ESJ Action Plan update process to a formal proceeding to telegraph the full Commission's commitment to changing the way it makes decisions. Beyond these critical steps, the Commission should ensure that the work undertaken thus far and in the future by public participants is eligible for compensation in some form, including through the Intervenor Compensation program, as applicable, and through a grant-making process.

III. The Commission Should Expand the Definition of "ESJ Communities" Whom the Plan Targets.

On page 18-19 of the ESJ Action Plan the Commission acknowledges that it has limited the definition of ESJ communities in the plan and nods to areas where the definition could be expanded. TURN believes that the ESJ Action Plans failure to expand the definition of ESJ communities to include, "communities that experience disproportionate challenges with affording utility service" is a gross oversight. In the wake of unprecedented rate hikes and mounting energy burden on struggling communities, the issue of access to utility service is an equity issue and the link to solving this issue is affordability. Energy and telecommunications insecurity are environmentally and socially injustice in the modern world. Thus, the definition of "ESJ Communities" should be broadened to include communities that experience disproportionate challenges with affording utility service.

IV. The Commission Should Modify the Draft ESJ Action Plan 2.0 To Better Position the Plan to Advance Equity for ESJ Communities.

TURN offers comments on several of the nine goals and associated "revised objectives" that are intended to make the plan more robust and likely to deliver the stated intended benefits. TURN's recommendations stem from our collective experiences with "feel good" plans that do little to counteract the continuing complicity of governments in systemic racism. We ask the Commission to do the challenging work of burdening itself and its' decision-making processes so that others –

specifically ESJ communities – will experience equitable access to safe, reliable, and affordable utility services.

Goal 1: Consistently integrate equity and access considerations throughout CPUC proceedings and other efforts.

This is the most important of the Goals laid out in the ESJ Action Plan and the most significant vehicle for addressing many of the other overarching goals. Consistently integrating equity and access considerations throughout Commission efforts from the inception of every project will strengthen staff’s ability to identify and address equity considerations on a day-to-day basis and socialize this interest amongst Commissioners, staff, and participants in proceedings.

All Commission actions have the potential to impact consumers inequitably, every single rate increase, merger, or planned outage has real and material impacts on the lives of every California resident. The Commission must functionally acknowledge this fact and until this is achieved, the Commission will not be able to have meaningful impact upon the California residents most vulnerable to the downsides of Commission decisions.

Draft “Revised Objective 1.1” is to “build systematic approaches for ESJ priorities” in the Commission’s proceedings and decisions, as well as the implementation of those decisions through advice letters, general orders, and resolutions. TURN agrees that systematic approaches are appropriate. These approaches should include requirements, not merely guidelines, for every Commission action.

TURN recommends that the Commission expand the draft ESJ Action Plan update to include the requirement that every Commission decision and resolution include an assessment of the impacts on ESJ communities, including but not limited to economic and environmental burden, displacement, as well as identify indicators that advance these communities. A framework for these ESJ community impact assessments can be developed as part of the ongoing ESJ Action Plan work, with input from impacted communities (as provided above). Where proposed Commission decisions or resolutions prove to have disparate negative impacts on ESJ communities and do not affirmatively provide opportunity for ESJ communities, the Commission should be required to:

- a. Mitigate all negative impacts to ESJ communities; and
- b. Develop alternatives that affirmatively further equity and environmental justice.

If A and B cannot be achieved the Commission should abandon any decision or resolution that causes ESJ communities harm and does not affirmatively further equity and environmental justice.

As an example, TURN has consistently argued that the exorbitant amount of funds being used to fund transportation electrification (TE) creates a disproportionate burden on lower income communities. Although these communities, like all communities, benefit from TE through the overall greenhouse gas reduction, the financial burden disproportionately falls on lower income

communities due to current rate structuring. The burden also disproportionately falls on investor-owned utility (IOU) ratepayers to fund these stations that provide emission reduction benefits to the entire state, including publicly owned utility (POU) and municipal utility customers, who have to date paid a significantly lower share of utility-funded TE investments.

The Commission sought to solve this problem through funding charging stations in ESJ communities to support equity. The decision was reached without regard to facts regarding the level of car ownership in general, and electric vehicle adoption, by low-income households and/or other households of color in the targeted communities. It was also reached without consideration of the impact that locating these stations might have on increasing displacement within these communities. Without a data-driven assessment of these kinds of impacts, the Commission should not assume that placing electric vehicle (EV) charging stations in ESJ communities will do more good than harm or advance equity. The only certainty is the rate increase to pay for these new charging stations. To that end, equity in TE requires regular assessment of the utilization of charging stations. Unused stations do not provide any direct community benefits. These utilization assessments will help inform the ESJ community impact assessments done for future charging station projects.

TURN believes a more thorough examination of the impact that the installation of vehicle charging stations in disadvantaged communities will have been needed to ensure that all CPUC development projects are carried out with little or no negative impact on displacement of current community members, referred to in the housing and transportation sectors as “development without displacement.” Further, the Commission must seriously consider the “equity” of requiring low and moderate-income ratepayers to subsidize light-duty charging stations on private property, which are often an amenity exclusively for employees of that business, or residents of a specific building, and provide little to no direct benefits to the community.

For another example, the Commission’s communications surcharges are applied in consumer bills to an increasingly limited number of services. The subscribers to these services appear to be those who do not have access to more expensive services that are exempt from the surcharges. Therefore, the burden of shouldering the public purposes programs supported by the surcharges (e.g., California LifeLine) is laid on the backs of those who cannot afford or cannot access expensive services.

These public purpose programs are intended to aid Californians who are low-income or otherwise qualify for assistance. Consequently, laying the burden of the surcharges for these programs on primarily lower income Californians hampers the purpose of supporting lower income community members. TURN believes the Commission must thoroughly reevaluate its surcharge structure and ensure that ESJ and other low-income communities are not disparately burdened with paying the surcharges. Moreover, TURN believes the Commission must expand the reach of the public purpose programs to remove barriers for enrollment for the intended population to meaningfully access the assistance available through those programs.

Goal 2: Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health.

The draft Revised Objectives for Goal 2 include “research and analysis” of ESJ community impacts, continuing to “address ongoing and legacy impacts,” and “prioritized” investments in ESJ communities. As explained in TURN’s discussion of Goal 1 above, TURN believes that the Commission needs a data-driven assessment of the impacts of its proposed decisions on ESJ communities, including decisions regarding investments in clean energy resources. It is not enough to assume that prioritizing clean energy funding in ESJ communities will undo systemic inequities. Such funding decisions might deepen inequities because of the disparate impact of rate increases on low-income communities that disproportionately struggle to afford utility cost.

For these reasons, TURN recommends that the Commission expand the ESJ Action Plan to include a mandatory assessment of the environmental and social justice impacts on the communities targeted by the plan that will flow from every Commission decision, including clean energy and telecommunication investment decisions. The Commission should also embark on rigorous economic analysis that identifies the cost benefit of all decisions on ESJ communities.

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities.

Regarding access to high-quality transportation services for ESJ communities, TURN addressed TE investments in response to Goal 1 above but provides the following additional thoughts. Most ratepayer-funded TE investments to date have been made for light-duty vehicles which are an individual mode of transportation. For TE projects, the ESJ community impact assessment should consider what types of transportation services the community needs and will most benefit.

Seven percent of California households do not own a car and 15 percent of black households in California do not own a vehicle. Accordingly, for many vulnerable community members, subsidies for passenger vehicle charging will provide no direct benefits. Therefore, the Commission should require community-level assessments to understand and act to create benefits reflective of the transportation needs of a particular ESJ community before using ratepayer funds to install charging stations in those communities. For some ESJ communities, a greater focus on electrification of public transit options or electric bike access may be the best way to further equity and environmental justice.

The Commission should build on work to recognize the historic underpinnings that frame many of the ESJ communities in California. Specifically, access to essential and affordable services such as high-speed broadband or reliable networks that support communications in the state should be analyzed as part of all major telecommunications proceedings. The circumstances of the COVID-19 pandemic which forced work and school from home exacerbated the inequitable effects of broadband service and access for many ESJ communities in California.

To make its work meaningful, the Commission must go beyond simply “acknowledging” the historic underpinnings that continue to systemically oppress ESJ communities. The Commission should proactively name those historic underpinnings in its decisions and resolutions, and specifically state how the Commission’s decision and resolution redresses the harms of that historic underpinning, or—at the very least—does not perpetuate those harms.

Goal 5: Enhance outreach and public participation opportunities for ESJ communities to meaningfully participate in the CPUC's decision-making process and benefit from CPUC programs.

Public participation opportunities are an especially important vehicle for community voices to make themselves heard by the Commission. As an early advocate for public participation hearings (PPHs) in formal Commission proceedings, TURN has always valued the opportunity to bring the voices of those most impacted by the Commission’s decisions to the table to share their lived experiences. This does not, however, mean that the PPH mechanism could not be improved. TURN suggests the following to improve the PPH process.

- Transparency and standardization regarding use of PPH content

TURN believes the Commission should increase transparency through reporting and making public the ways in which Administrative Law Judges, Commissioners and other CPUC staff use PPH text included in the body of testimony. The Commission should identify with transparency the process for how PPH comment is analyzed; what weight is given to public comment; and how public comment weight is standardized across the Commission departments and specifically with its decisionmakers.

Commission staff should be required to verbally report out at voting meetings and provide within the background section of every decision on the number of written and verbal comments a proceeding received and the broad categories of support or opposition that is recorded.

- Transparency required with respect to PPH participants

TURN has sometimes been surprised by large turnout in support of IOU proposals at PPHs only to find out those organizations speaking in support of rate hikes are often recipients of IOU foundation grants and other funding. Public commenters at PPHs, CPUC Business meetings, legislative briefings and at all other opportunities to provide public testimony should be required to disclose if they receive financial support from the IOUs and what percentage of their budget those funds comprise. Otherwise, the Commission risks giving equal weight to a participating CBO with a clear conflict of interest versus those organizations not compromised by IOU funding.

- Increase and evaluate accessibility of PPHs and other Public Participation Opportunities

Other small adjustments can make PPHs more accessible. Standardized documents and information about the PPH in language, interpreters at the PPH, ADA accessible locations in community spaces located on public transit lines and in community spaces that do not require entering buildings with metal detectors and armed security are significant first steps toward increasing the accessibility of public participation opportunities.

The Commission should document and report efforts to engage community voices.

Goal 6: Enhance enforcement to ensure safety and consumer protection for ESJ communities.

The Commission should carefully review the telecommunication services provided to ESJ communities. This includes oversight over the wireline, wireless, VoIP, broadband services provided in ESJ communities, or larger areas with significant pockets of ESJ communities so that provider marketing efforts in ESJ communities are delivered as promised.

The Commission should review all safety related protections to ensure that disaster recovery inequities do not develop or are not left unmitigated. ESJ communities under the threat of wildfires should be analyzed with extra precaution.

Goal 8: Improve training and staff development related to ESJ issues within the CPUC's jurisdiction.

The Commission staff and Commissioners tasked with carrying forth the ESJ Action Plan are the critical piece to ensure that the plan achieves its' goals. The Commission should Implement mandatory ongoing training focused on dismantling racism. This exercise should include proceeding-level analysis of how ESJ issues are present and the methods in which the Commission can work towards remedying ESJ issues in its proceedings.

Unfortunately, TURN has witnessed CPUC staff bias statements and micro-aggressions towards the public and specifically towards members of marginalized communities and people of color during a public participation hearing. The implications of such actions have a chilling effect on the willingness of members of these communities to step forward and engage when staff is ill equipped to engage with deference and respect and without bias.

The Commission should elevate the importance and resource given for dismantling racism and anti-black training requirements for staff with direct decision-making authority and staff with direct contact with the public.

The Commission should transparently report dismantling racism training and development of CPUC staff to the public by overall numbers, department, and job classification.

Goal 9: Monitor the CPUC's ESJ efforts to evaluate how they are achieving their objectives.

The draft Revised Objections for Goal 9 include establishing “consistent quantitative metrics” related to ESJ communities and promoting “meaningful feedback loops” between the public and Commission. TURN agrees that the monitoring and evaluation of the Commission’s ESJ efforts is a critical piece in ensuring that the plan has an impact. TURN believes the Commission should seek to increase the efficacy of this evaluation and monitoring by developing tangible, measurable goals, metrics, and benchmarks for each of the Plan’s nine goals, where appropriate.

The Commission should produce an annual report detailing progress towards the nine ESJ goals, based on its performance relative to the adopted metrics. This ongoing monitoring and evaluation should be part of the Commission’s commitment to holding itself accountable for implementing the ESJ Action Plan and advancing equity through its’ decisions. The annual report should include a cumulative cost for all the programs adopted under this framework and an accounting of the associated bill increases for ESJ communities, or at the very least CARE and non-CARE bill impacts.

The Commission should also embark on rigorous economic analysis that identifies the cost benefit of all decisions on ESJ communities.

Related, the Commission should commit to having a transparent public participation process, making it possible for stakeholders to see how the Commission incorporated – or did not – the recommendations of participants in the ESJ Action Plan process. To this end, the Commission should post all comments submitted by organizations on the ESJ Action Plan on its website. This will add another level of transparency and accountability and help to ensure groups can work both with the Commission and between groups and support better coordination and collaboration.