The Environmental Law Institute
Climate Judiciary Project

Expanding to Support the Clean Energy Transition

At the end of 2023, 83 percent of U.S. primary energy generation still came from fossil fuels. According to the National Academy of Sciences (NAS), nearly all of this must transition to clean energy if the country is to meet its national policy goal of net-zero greenhouse gas emissions by 2050. However, opposition to clean energy projects has grown; the recent NAS report, "Accelerating Decarbonization in the United States (2023)," identifies this opposition as a formidable challenge to meeting the national net-zero emissions goal. This opposition adversely affects everyone, but it inflicts disproportionate impacts on disadvantaged communities. It is also increasingly resulting in litigation.

Litigation related to clean energy is complex. In addition to the specialized principles and approaches inherent in environmental regulation and permitting, it requires an understanding of the environmental impacts and benefits of large infrastructure projects, the technology underpinning the clean energy transition, the economic incentives and inhibitors behind clean energy policies, and the socio-economic dynamics of energy development in communities. Most judges are generalists and lack familiarity with such scientific and technical issues.

Judicial education about the science, technology, economics, and impacts (STEI) of clean energy can ensure that judges have a basic understanding of the issues that are certain to arise in litigation related to the clean-energy transition. Providing judges with the necessary knowledge to consider these issues will facilitate outcomes that are based on science and the rule of law, are consistent with statutory policy, and take account of climate justice. Importantly, CJP's curriculum already includes the disparate and disproportionate effects of climate change on historically disadvantaged communities, focusing on fundamental rights, environmental justice, and the adverse health and other human impacts of climate change. Our clean-energy program will provide factual information on the STEI of the clean energy transition so that judges may make decisions that appropriately take into account these issues when they are presented to them.

The curriculum will be varied and flexible so that our programming can be targeted by subject and location to match the factual and legal issues that are being presented in those jurisdictions. So, for example, the economics and impacts on agriculture and land use of solar farms can be presented in certain plains states, while impacts of offshore wind development on fisheries and marine mammals will be presented in coastal states. Our content will deliver expert understanding of the balance of benefits and harms of energy projects on human health, wildlife, property values, communities, agriculture, and other impacts, especially those bearing on permitting decisions for clean energy projects, as those are often the subject of litigation.

Content of the New Programs

Our existing curriculum is the starting point, and we will add new modules on clean energy topics, focusing on the issues most often involved in litigation, such as environmental and human impacts of projects, how these projects are influenced by the environmental mandates of laws such as the National Environmental Policy Act and the Endangered Species Act and their state equivalents, and how clean energy policies interact with energy utility regulations. Examples of topics to be addressed might include:

- The state of the science related to the impacts of clean energy technologies, especially wind, solar, and electric storage and transmission, on species, ecosystems, and human activities
- Social dimensions of the clean energy transition: human health, employment, public engagement, quality of life, community impacts
- Justice and equity considerations, especially provisions in the IRA regarding clean energy and their implications for redressing disproportionate impacts of environmental pollution on low-income and historically marginalized communities
- Expeditious reduction of greenhouse gas emissions while engaging communities to address climate justice and equity
- The national policy to advance clean energy and reduce fossil fuel emissions: environmental externalities from both fossil fuels and various clean energy technologies
- Basic economics of electricity generation, transmission, and storage
- State and local laws related to reducing fossil fuel emissions
- Economics of net metering, grid reliability, and transmission costs
- The current state of litigation related to clean energy.

Achieving this at the required speed will be made possible by our strong infrastructure (judges who have participated in CJP programming, collaborating scientists and scholars, affiliated institutions of judicial education) and our network of Judicial Leaders in Climate Science who are motivated to bring energy-related content to peer judges in their states.

Measuring the Impact of the Program

Ultimately, the impact of the lessons we offer will be in the full range of judicial decisions, grounded in facts and evidence, and their impact on the market environment for clean-energy development. Our purpose is not to influence individual decisions but rather to give judges the tools and context they need to make informed judgments illuminated by the scientific content. The best short-term measures of success we have found in CJP are the number and depth of lessons delivered to judges, the number and jurisdictions of judges participating, and judges' evaluation of the usefulness of the information, especially as manifested in requests for further support and resources to continue their education activities.