Energy Justice Intervenor 2024

Session 7: Addressing Community Energy Challenges

The Chevron Doctrine
Last time we met, there was expressed interest in talking about changes in administration and how that might affect our work and some strategies we can think about for the future to secure progress now. Let's start by talking about something very recent that will definitely affect our work moving forward: the overturning of the Chevron Doctrine.

Some background on the Chevron Doctrine:
The Supreme Court formalized what became known as the Chevron Doctrine in a 1984 case, *Chevron USA v. NRDC*. In essence, it says that courts should give administrative agencies wide latitude in interpreting their legislative instructions.

The following example comes from the Volts podcast on this topic,
"If Congress says in the Clean Air Act that air pollution should be reduced with the "best system of emission reductions," it is up to the EPA, which is charged with implementing the law, to determine what the best system is. Even if a given judge does not like the way that the EPA has interpreted the law, the Chevron Doctrine says that the judge should, absent extraordinary circumstances, defer to the agency's interpretation."

Well, now the Supreme Court has overturned this previous decision along party lines with a 6-3 majority. This action greatly increases power for courts (or unelected federal judges) to decide how to interpret the law and decreases executive power.

And this comes from an Inside Climate News article on the decision:
"The decision to overturn Chevron fulfills a long-held wish of conservative groups that seek a smaller role for the federal government. They are led by a network funded by the Koch family, which made its billions in the petrochemical industry. Although small fishing operations brought the case against federal regulators, they were represented by a titan of conservative law, former U.S. Solicitor General Paul Clement, and lawyers for the Cause of Action Institute, which shares an address and personnel with the Koch-funded organization Americans for Prosperity.

Ironically, the 1984 case articulating the deference principle, Chevron v. Natural Resources Defense Council, was an anti-regulatory decision. In that case, a unanimous court upheld a Reagan administration air pollution regulation that environmentalists challenged as too weak.

That rule was issued by an Environmental Protection Agency then led by the late Anne Gorsuch, a fierce opponent of regulation. Her son, Supreme Court Associate Justice Neil Gorsuch, today wrote a lengthy concurring opinion affirming the wisdom of sweeping away the Chevron precedent, finding the reason in the roots of common law, from ancient Roman law to the efforts of King George to control the American colonies."

So, this is a significant decision given that the Chevron Doctrine is one of the most cited in administrative law especially in instances where industry fought against regulations they felt were too stringent or burdensome to meet. You can imagine what kind of industries we might be talking about here.

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Cases
Congress has been hesitant to pass comprehensive standalone bills like the Clean Air Act in recent years, instead opting to make many decisions tied to the environment in must-pass budget legislation that can leave much open to interpretation. This means that a lot of that interpretation will now happen in the courts.
Here's a look at some of the cases underway that, with the overturning of Chevron, can tip the balance in favor of the challengers.

(Review cases on slide)

So these are just some cases you might be hearing more about in the coming months. I encourage you all to attend any upcoming webinars on the Chevron decision as I'm sure groups will be gathering to talk through more detailed implications of the matter. If I come across any, I will be sure to share them with you all.

So, with the reality of an increasingly hostile government regarding climate progress, what strategies can we be thinking about for the future?

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Long-Term Strategies
So here are some long-term strategies that I think are foundational for continued progress; we've discussed these in the past, but they are worth reiterating because they are the foundation for the other strategies in the legislative and regulatory world.

Organizing and Building Coalitions
As we discussed in the last session, organizing and coalitions have been foundational to environmental progress, and they will continue to be. Building relationships at the local level and organizing around people's material conditions (which may not always start with a clearly environmental issue) is the best way to move people up the ladder of engagement and build local power. As we know, building power and demonstrating a base of support for a position is what gets our policies and solutions through a door, into a meeting, and into a negotiation in the first place, so it's important to remember that.

A lot can be gained from stepping back for a second from the policy and regulatory arenas to connect with people. Devoting time to developing just, trusting, interdependent relationships is one of the most important things we can do as climate advocates. This includes relationships in a one-on-one sense but also across organizations, causes, race, class, gender, and all axes of difference.

As we talked about in our last session, coalitions today are not always as structured as could be helpful, so it is up to us to get people together and have frank conversations about the intention behind coming together and what everyone needs to be able to commit to the cause in a real way.

Capacity Building

When we talked about The Spectrum of Community Engagement to Ownership, we touched on the capacity building and leadership that is built up over time as a result of engaging deeply with a community.

Capacity building and relatedly mentorship are crucial to organizing in all areas of environmental advocacy. Just as we discussed having multiple people assigned to certain tasks in coalitions, we need to be mindful of how we are developing a new generation of leaders and passing on the best practices, tips, tricks, and insights that have come from our work to make the movement more knowledgeable and leaderful.

Building Local Infrastructure
And as we are building up and training up more leaders, it's imperative that we dream bigger as we simultaneously act more locally. This means really leaning into community-driven solutions that support long-term democratic decision making, resilience, wealth-building, and justice.

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Opportunities to Look Out For
Okay, now let's get specific with the kinds of opportunities you want to be on the lookout for. Consider these ideas as a starting point.

1. Constitutional amendments: In some jurisdictions, pursuing constitutional amendments to protect key energy justice principles might be an option, though this is typically a lengthy and challenging process. However, we have seen states make big changes through constitutional amendments on a range of issues. This is also an important tactic when we are talking about work at maybe the town or township level' these are locations that tend to have official documents with great authority, for instance, charters and constitutions, citizen bill of rights documents etc. This could be an opportunity to develop shared language around energy justice issues and how such documents can be supportive in enshrining supportive provisions.
2. Long-term contracts or agreements: Apply pressure on the current administration to enter into long-term agreements or contracts for energy justice initiatives that would be legally binding on future administrations. So for instance, long-term agreements for community solar projects, or for procuring clean energy to meet a renewable portfolio standard. A related opportunity is if a contract is up for renewal, is there an opportunity to propose and organize around alternatives if the current contract is underperforming in some way? So, for instance, here in Chicago, we have an Electricity Franchise Agreement with our utility, ComEd. When it came time to renew the contract last year, folks organized individuals to submit comments offering feedback on the renewed agreement and pressured elected officials to integrate more equity initiatives into the agreement. The result was a Franchise Agreement and an Energy and Equity Agreement that retained the city's right to municipalize (another future opportunity), with a shorter term length, workforce development commitments, and expanded funding for climate initiatives and projects with democratic oversight. So, there was a huge shift in terms of what was in the previous agreement.
3. Entrenched Funding: Push for dedicated funding streams or trust funds for energy justice programs that are separate from annual budget negotiations. The Chicago example I just talked about is an example of that. The franchise fee that the city receives is secure as part of the agreement and not subject to budget conversations. There was also an additional commitment of at minimum $100 million from shareholders for community benefit project.

4. Judicial Appointments: Advocate for the appointment of judges who have expressed a commitment to or knowledge about energy justice issues. This is a difficult opportunity to make an impact on but one that again, is tied to building power and mobilizing folks. Judicial appointments do not get as much attention as commission appointments, and that is definitely an oversight, especially in light of Chevron and the other environmental protections being overturned.
5. Regulatory Frameworks: Work to establish strong regulatory frameworks that institutionalize energy justice considerations in decision-making processes with detailed, binding rules. This is an opportunity that requires regulatory engagement but as we discussed in prior sessions, this can include inside and outside strategies to move a commission or other regulatory body toward more proactive stances.
6. Interagency Coordination: Create or advocate for the creation of work groups between agencies to advance energy justice. For instance, a partnership between a state environmental office and your public utilities commission to identify overburdened communities using environmental screening tools which could inform the development of solutions between both agencies. There are plenty of examples of these types of partnerships, and it can be beneficial to make note of precedents for this type of work in your state.
7. Elections: If there's an important local election coming up, this could be an opportunity to engage in candidate education on the issues as well as do voter mobilization to rally around an energy justice champion. If a candidate is up for reelection, this could also be an opportunity to set up community conversations where there is pressure to commit to future goals or progress.

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Regulatory Angles
And as a refresher, here are some regulatory opportunities and strategies to keep in mind:

- Utility performance standards: as we discussed when we talked about PBR, setting performance metrics for utilities is a long term strategy that can lead to an advancement of certain energy justice objectives.
- Strengthen enforcement mechanisms: Relatedly, strengthening enforcement of such standards is crucial for utility accountability and securing progress. Commissions can be more intentional about enforcing standards and creating penalties for lack of performance.
- Pricing mechanisms and shut-off protections: When we discussed remaking, we discussed various pricing structures, such as time-of-use rates and income-based rates. Innovating rates for the grid of the future will be crucial, as will shut-off protections for customers.
- Permitting processes: New energy infrastructure should be assessed with the utmost scrutiny as we plan to increase distributed energy resources on the grid and bolster resilience.
- Capacity market reform: Another strategy we can consider is reforming market mechanisms to incentivize clean energy procurement.
- Grid modernization: As we invest in grid hardening and other long-term investments, we can advocate for investments to flow to long-underserved communities.
- Just transition frameworks: Being mindful to consider the impacts of various energy decisions on communities and creating shared language for how to plan for the long term.
- Energy burden thresholds: Can we set target energy burden thresholds and enshrine them in commission directives?
- Innovative program design to expand access to DER: There are a number of utilities and organizations innovating to advance DER adoption, and we can look to secure funding and support for new models to be tested.

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Summary of Recommendations from America is All In Report
This comes from a report by America is All In looking at actions the United States can take to meet its 2030 climate target of 50-52% emissions reductions by 2030 from 2005 levels.
The report shows how an all-of-society climate strategy—drawing on the groundswell of bottom-up action from states, cities, and businesses, combined with ongoing federal leadership—can support America in meeting its goal.
This table shows that actions can still be supportive in the absence of federal action.

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Community Benefit Agreements
Okay, now let's talk about community benefit agreements and how they can be leveraged to deliver additional benefits to communities.

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What are Community Benefit Agreements?
A Community Benefits Agreement (CBA) is a contract between community representatives and a developer that outlines how the development will provide benefits desired by the community and ensures the coalition of community representatives will support, or at least remain neutral, on the project. These are powerful tools that can lock in community benefits for the long term and should be a part of any major energy developments.

When the parties engage in meaningful dialogue and negotiation, CBAs can provide benefits to multiple parties:

- To the community in the form of certainty about benefits sought from the project
- To the developer, who benefits from the streamlined process before official bodies when the community is actively supportive (or at least not protesting) the project.

A private contract in the form of the CBA allows the parties to incorporate new ideas and provisions outside the typical development deal between the developer and the local government.

A CBA is:

- a contract between the developer and community members who have formed a coalition that is meaningfully negotiated by both the developer and the coalition
- an agreement with specific community benefits commitments that will be delivered if the project moves forward
- focused on commitments that benefit the community broadly rather than just the organizations that negotiated the CBA
- enforced by each party to the agreement

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What are Community Benefits?
Community benefits is an umbrella term including a variety of ways in which developments provide tangible, measurable, and community-driven benefits within a community.

Some levers include:

- Host or Development Agreements: these are a legal contract between a new developer and a municipality showing that the developer will accept certain guidelines in exchange for municipality support for the development.
- Good Neighbor Agreements: these are legal private contracts between an existing business and a community coalition in which the business agrees to change its behavior to support the community
- Community Benefit Agreements: these are legal, private contracts between a new developer and a community coalition in which the developer agrees to provide specific benefits to the community in exchange for the community coalition's support of the development project
- Ordinance requiring Community Benefit Agreements: this is when the municipality passes a local law requiring Community Benefit Agreements (CBAs) or that a community benefits from the developments that meet a certain criteria defined in the law
- Community Benefit Plan: different from a Community Benefit Agreement (CBA), a Community Benefit Plan (CBP) is a specific term required by any project applying for Infrastructure Law and Inflation Reduction Act funding opportunities through the Department of Energy. The CBP must include details about how the development will meet the DOE's four core policy priorities:
    - Investing in the workforce
    - Engaging communities and labor
    - Advancing diversity, equity, inclusion, and accessibility
    - Implementing Justice40

And just to expand on the Community Benefit Plans required by DOE,

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Differences between CBAs and CBPs
As you can see here, a major difference is that the CBPs required by DOE are not legally enforceable and actually a CBA can result from a CBP. So just to clarify the CBPs tied to federal funding are similar to CBAs but not the same.

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Potential Benefits in Plans
Here are some of the outlined benefits included in the CBP template for projects:

- Access to jobs and business opportunities for residents of disadvantaged communities and/or underrepresented workers
- Investments in training for local residents, residents of disadvantaged communities, and/or underrepresented workers
- Commitments to make investments in subsidies for caregiving (e.g., childcare subsidies) and/or in transportation services for workers to access to the worksite
- Access to local educational programs, electricity discounts, critical services, and associated grants
- Commitments to make investments in a community-controlled fund to address community development and other needs identified by the community.
- Community steering committee/community governance structure
- Environmental, wealth-building, local energy, and other benefits identified by the community

- Remedies for non-compliance

So this is really typical of what we see across community benefit agreements, though of course the specifics will vary from place to place.
In the follow-up resources doc, I'll link a database of community benefit agreements for you to see how different projects led to different agreements.

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Initiating Engagement
Here are some ways to kickstart community engagement and lay the groundwork for CBAs depending on the audience:

Developers

- Identify stakeholders and build public trust. Stakeholders should represent a diverse group of community-based organizations and individuals.
- Engage community representatives, as well as coalitions, and communicate project benefits with open dialogue/transparency.
- Ensure stakeholder representatives are part of the project development team early in the process and align project goals and schedules with their understanding.
- Initiate project briefings with key state and local government officials.
- Train company project representatives about community outreach and CBAs.
- Educate stakeholders about the technical aspects of the development.

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Communities

- Research development proposals in your region and identify any that have the potential to bring important benefits or significant impacts to the neighborhood(s) where they will be located.
- Organize a broad-based coalition of community interests and recruit stakeholder organizations.
- In order to maximize turnout, hold public meetings with assistance from identified leaders. Utilize multiple communication mechanisms to reach affected populations.
- Actively engage the developer(s) with sustainable community objectives, via open dialogue and transparency.

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State and Local Governments

- Inform community coalitions of proposed developments.
- Encourage developers to enter good-faith negotiations with responsible coalitions.
- Inform developers of the benefits they can achieve through CBAs.
- Respect the negotiating process and honor community coalition agreements.
- Fold CBAs into public-private partnership (PPP) agreements – when and where appropriate – for added enforcement.

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Case Study: Chevron U.S.A. Inc.'s Richmond Refinery Modernization Project
This case study comes from the *Guide to Advancing Opportunities for Community Benefits through Energy Project Development* from the DOE Office of Ecnomic Impact and Diversity.

The city of Richmond, California and Chevron U.S.A. Inc.'s Richmond Refinery Modernization Project developed a Communities Investment Agreement – similar to a CBA – which is designed to protect the environment, enhance safety, reduce energy use and create 1,000 local construction jobs. Chevron's $1 billion investment to modernize the refinery will replace some of the facility's oldest processing equipment with modern technology.

The main project components include replacing a 1960s hydrogen plant with modern technology. Chevron states that the new plant will process higher-quality hydrogen more efficiently and reliably, and the upgrades will give the refinery flexibility to process crude oil blends and gas oils, while meeting environmental regulations.

Under the Communities Investment Agreement, Chevron has committed to investing $30 million over 10 years in both Richmond and North Richmond, lowering greenhouse gas emissions and creating local green jobs. The agreement intends for the project to create 1,000 local construction jobs.
The Communities Investment Agreement also included:

- A scholarship program
- Pre-apprenticeship construction skills training, with direct entry agreements with the local union
- On-the-job training programs, which provide wage subsidies for businesses that hire Richmond residents and improve the skills and job-readiness of residents
- Adult education and skills-building programs, to prepare Richmond residents to be productive members of the local labor force – with the goal of achieving full and meaningful employment
- Youth employment and skills-building programs, designed to enhance the readiness of Richmond youth for employment in various technical areas, including the petrochemical, renewable energy and emergency preparedness and response sectors
- Implementation of full-service community schools, especially elementary schools nearest to the facility
- Community-based greenhouse gas reduction programs, including a Climate Action Plan, rooftop solar systems and utility-scale photovoltaic solar farms and
- Local-hiring process and plan for construction and non-construction, including the addition of a local-hire coordinator.

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Case Study: Sunset Park
"Following decades of local advocacy to find sustainable uses for an abandoned port facility— including offshore wind energy— the New York City Economic Development Corporation (NYCEDC) and offshore wind energy developer Equinor formed a partnership in 2022 to transform the South Brooklyn Marine Terminal into an offshore wind turbine assembly facility.
Two community-based organizations, the Sunset Park Task Force and UPROSE, collaborated with NYCEDC and Equinor in this effort and played key roles in ensuring that this offshore wind energy port project would prioritize the community's vision for sustainable infrastructure revitalization that would create jobs and economic opportunities without displacing residents from the community or creating pollution.

The project agreement features various benefits for the Sunset Park community and New York City more broadly, including the establishment of a $5 million ecosystem fund to support local workforce training, a commitment to hiring from the local community, and several efforts to support local women- and minority-owned businesses entering the offshore wind industry.
Equinor will also create an offshore wind energy learning center at its Brooklyn office, which the community had requested based on the success of a local recycling education center. Finally, the developers committed to making South Brooklyn Marine Terminal a low-emissions facility to reduce impacts to local air quality and health." — DOE report

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Demand Response
Okay, last time we met there was an expressed interest in talking more about demand-side management so I wanted to be sure to circle back to this conversation.
I won't go into too much depth today but the resources document has some really great explainers and case studies that I recommend reviewing if you want to dive deep into program design and how costs are examined in the process.

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Demand Response Categories
Demand response (DR) refers to the intentional modification of electricity usage by end-use customers during periods of system stress, system imbalance, or in response to market prices.

DR policies and programs were initially developed to help support electric system reliability by reducing load during peak hours. More recently, technical innovations have made it possible to expand DR capabilities to provide an array of ancillary services necessary to maintain grid reliability. DR is also capable of promoting overall economic efficiency, particularly in regions that have wholesale electricity markets.

Within the broad category of DR, the management of end use loads can either be initiated by end-users (referred to as "Non-Dispatchable" in the figure) or by the distribution utility, a third-party aggregator, or the transmission system operator (shown as "Dispatchable" in the figure).

Dispatchable DR programs can be further categorized based on the purpose they serve for the utility or system operator. Some programs focus on maintaining reliability by using DR resources to provide capacity, reserves, energy reductions, or frequency regulation services (labeled as "Regulation" in the figure). Other programs focus on using DR resources to reduce wholesale electricity prices and provide economic benefits. But in all forms of DR, endusers intentionally modify their consumption in order to reduce their costs or to receive some form of compensation.

DR programs can facilitate the use of various emissions reductions strategies while ensuring reliable electric service. For example, these programs can facilitate integration into the grid of greater amounts of zero-emissions electric generation, namely variable energy resources (VERs) (like wind and solar generators) and inflexible resources (like nuclear generators).

It is important to note, however, that DR programs may not automatically result in lower emissions of GHGs or criteria pollutants, depending upon the practices used to achieve the electric service benefits and air quality regulatory oversight may be necessary in some cases to ensure that DR programs do not have a negative impact on emissions and air quality.

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Challenges to DR
Key challenges include:
Establishing baselines to accurately measure demand response contributions to ensure appropriate performance and compensation.

Resolving dispatch issues between traditional distribution utilities and regional system operators or balancing authorities. As the proportion of variable generation resources increases, demand response can play a critical role by providing more flexible options to system operators to ensure reliability and improve overall system efficiency. In order to achieve that greater flexibility, system operators must be able to directly dispatch demand response resources located across multiple utility distribution areas.

Integrating sufficient metering and communications equipment to provide accurate and timely information about overall electric system performance as well as specific demand response resource operations, while ensuring requirements are not cost prohibitive for smaller resources.

Modifying current market and operational rules to remove numerous market barriers to demand response participation, such as minimum size requirements and prohibitions regarding demand response aggregator participation.

Addressing the lack of demand response participation in certain regions that is often related to traditional utility incentive structures that do not reward utilities for incorporating demand response. In some regions, third-party aggregators are obstructed from enrolling demand response resources due to utility opposition and regulator concerns about consumer impacts and benefits.

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Opportunities and Recommendations for DR
Coordination of demand response resources by system operators to more accurately match resource needs with system conditions. Rather than relying on individual suppliers or distribution utilities to activate demand response resources, regional system operators could provide more reliable and efficient implementation that utilizes demand response resources across multiple utility areas.
Deployment of technologies that enhance the ability of system operators to integrate new forms of demand response into normal system operations during any hour, rather than just peak demand periods. These new resources include price-responsive demand that is enabled by advanced meters and demand response resources with a storage component such as water pumping and space heating that can increase demand during periods of excess generation. Such forms of demand response can reduce costs and enhance system efficiency during any hour of the year.

Enhanced or new market designs that provide compensation for a variety of demand response (and other) resources to meet future system needs. These could be changes to existing capacity programs or separate programs for specific demand response resources that supply regulation or balancing services.
Provide greater revenue certainty. The growth of demand response has been strongest where a steady monthly payment exists, and where multiple streams of revenue are present to support different types of loads and different types of customers. Trying to rely on unpredictable and infrequent high-priced events

is a business model that is too risky to incentivize significant demand response participation. Mechanisms to provide greater revenue security could include targeted instruments such as procurement of specific critical services, or less-targeted instruments such as forward capacity markets.

The residential market remains largely untapped for now. Few demand response providers have even approached the residential market to date due to the amount and variety of load available from large customers. However, cost-effective technology to provide small amounts of demand response from a very large number of residential customers is not far away, and may lead to widespread implementation by the end of the decade.

Regulatory support at both the state and federal level has been critical. In order for demand response to flourish, the necessary policy and regulatory framework first had to be established to govern the treatment of demand response and enable it to be compensated in a manner comparable to generation resources. The consistent attention to these issues by the Federal Energy Regulatory Commission has proven essential to the success of demand response resources to date.

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Please review the slides for an overview of the Final Presentation Guidelines and Requirements