117TH CONGRESS
2D Session

H. R._____

To establish new Federal renewable energy use requirements, support the equitable transition to clean energy power generation, and require cumulative impact assessments for fossil fuel-fired power plant permitting, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. CAROLYN B. MALONEY of New York introduced the following bill; which was referred to the Committee on __________________________

A BILL

To establish new Federal renewable energy use requirements, support the equitable transition to clean energy power generation, and require cumulative impact assessments for fossil fuel-fired power plant permitting, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Justice in Power Plant Permitting Act”.

(Original Signature of Member)
SEC. 2. DEFINITIONS.

In this Act:

(1) **COMMUNITY INTERVENOR.**—The term “community intervenor” means an effective, qualified, and compensated representative, or group of representatives, that participates in public service commission and permitting authority proceedings on behalf of ratepayers in, and residents of, impacted environmental justice communities and other impacted communities to—

(A) propose independent analyses of, including alternatives to, fossil fuel-fired power plants and other polluting projects seeking approvals, permits, or renewals;

(B) decrease electricity costs;

(C) reduce environmental burdens;

(D) improve public health; or

(E) otherwise advocate to benefit such communities.

(2) **CRITICAL FACILITY.**—The term “critical facility” means any facility critical to public health infrastructure, including health care, water and wastewater systems, and emergency services.

(3) **CUMULATIVE IMPACTS.**—The term “cumulative impacts” means any exposure to a public health, environmental, or climate risk, or other effect
occurring in a specific geographical area, including
from an emission, discharge, or release—

(A) including—

(i) environmental pollution released—

(I) routinely, accidentally, or otherwise; and

(II) from any source, whether single or multiple; and

(ii) as assessed based on the combined past, present, and reasonably foreseeable emissions and discharges affecting the geographical area; and

(B) evaluated taking into account sensitive populations and other factors that may heighten vulnerability to environmental pollution and associated health risks, including socioeconomic characteristics.

(4) ENVIRONMENTAL JUSTICE.—The term “environmental justice” means the fair treatment and meaningful involvement of all people regardless of race, color, culture, national origin, linguistic isolation, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies to ensure that each person enjoys—
(A) the same degree of protection from environmental and health hazards; and

(B) equal access to any Federal agency action on environmental justice issues in order to have a healthy environment in which to live, learn, work, and recreate.

(5) ENVIRONMENTAL JUSTICE COMMUNITY.—The term “environmental justice community” means a community with significant representation of communities of color, low-income communities, or Tribal and Indigenous communities, that bears burdens of negative public health effects, environmental pollution, and the impacts of climate change, and possesses certain socioeconomic criteria, which may be identified based on geographic, public health, environmental hazard, and socioeconomic criteria, including, but not limited to—

(A) areas burdened by cumulative environmental pollution and other hazards that can lead to negative public health effects;

(B) areas with concentrations of people—

(i) experiencing high unemployment rates, high rent burdens, low homeownership rates, or low levels of educational attainment; or
(ii) who have historically experienced discrimination on the basis of race, ethnicity, ancestry, or place of origin; or

(C) vulnerability to the impacts of climate change.

(6) FOSSIL FUEL-FIRED POWER PLANT.—The term “fossil fuel-fired power plant” means—

(A) a powerplant or electric generating unit that combusts fossil fuel or a fossil fuel by-product or derivative for the production of electricity in part or in full; and

(B) any boiler or generator that combusts fossil fuel and is—

(i) in a census tract or adjacent to a census tract with one or more power plants or electric generating units that combust fossil fuel; or

(ii) in a census tract or adjacent to census tracts with stationary and mobile sources of air pollution that have combined annual emissions of more than—

(I) 10 tons per year of any single hazardous air pollutant;
(II) 25 tons per year for any combination of hazardous air pollutants;

(III) 100 tons per year of any single air pollutant; or

(IV) the lower major source threshold in non-attainment areas for the air pollutant in non-attainment.

(7) IMPACTED.—The term “impacted” means the condition of being affected by one or more fossil fuel-fired power plants.

(8) PERMITTING AUTHORITY.—The term “permitting authority” has the meaning given such term in section 501 of the Clean Air Act (42 U.S.C. 7661).

(9) SUSCEPTIBLE SUBPOPULATION.—The term “susceptible subpopulation” means a group of individuals within the general population who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to air pollution, such as infants, children, pregnant women, workers, or the elderly.
(10) TRIBAL AND INDIGENOUS COMMUNITY.—

The term “Tribal and Indigenous community” means a population of people who are members of—

(A) a federally recognized Indian Tribe;

(B) a State-recognized Indian Tribe;

(C) an Alaska Native or Native Hawaiian community or organization; or

(D) any other community of Indigenous people located in a State.

SEC. 3. FEDERAL REQUIREMENT.

(a) REQUIREMENT.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended—

(1) in subsection (a), by striking “the following amounts shall be” and all that follows and inserting the following: “not less than—

“(1) 3 percent shall be renewable energy in fiscal years 2007 through 2009;

“(2) 5 percent shall be renewable energy in fiscal years 2010 through 2012;

“(3) 7.5 percent shall be renewable energy in fiscal years 2013 through 2019; and

“(4) 100 percent shall be air pollution-free renewable energy, including battery storage charged renewably, in fiscal year 2030 and each fiscal year thereafter, with steady and incremental progress to—
ward this goal required in fiscal years 2020 through 2029.”; and

(2) by amending subsection (c) to read as fol-

ows:

“(c) PRIORITIZATION.—In meeting the requirement of subsection (a), the President, acting through the Sec-
retary, shall prioritize the transition to consumption of air pollution-free renewable energy, including renewable en-
ergy and battery storage charged by renewably-generated electricity, by any facility within the vicinity of a major source (as that term is defined in section 112 of the Clean Air Act (42 U.S.C. 7412)), or units of such major source, run primarily to meet peak electricity demand.”.

(b) P UBLIC UTILITY CONTRACTS.—Section 501(b)(1)(B) of title 40, United States Code, is amended to read as follows:

“(B) PUBLIC UTILITY CONTRACTS.—

“(i) IN GENERAL.—Except as pro-
vided in clause (ii), a contract for public utility services may be made for a period of not more than 10 years.

“(ii) RENEWABLE ENERGY CON-
tracts.—A contract may be made for a period of not more than 40 years for—
“(I) the acquisition of air pollution-free renewable energy or battery storage powered by such energy; or

“(II) the provision and operation of air pollution-free renewable energy production facilities and the purchase of air-pollution free renewable energy from such facilities.”.

SEC. 4. JUST ENERGY TRANSITION FUND.

(a) Authorization of Appropriations.—There is authorized to be appropriated for fiscal year 2023, $10,000,000,000 for a Just Energy Transition Fund, to be administered by the Administrator in consultation with the Secretary and the Advisory Council, to remain available until expended, to award funds to States, territories, and Tribal governments for projects described in subsection (c).

(b) Eligibility.—To be eligible for a grant under this section, a State, territory, Tribal government, local government, community-based organization, nongovernmental organization, or private sector organization may submit an application, in such form and manner as the Administrator may require, for—

(1) a project that—
(A) addresses energy needs resulting from
the denial of renewal, or anticipated denial of
renewal, of a permit for a fossil fuel-fired power
plant pursuant to section 165(f) or section
502(j) of the Clean Air Act;

(B) apportions sufficient project funds, as
determined by the Advisory Council, to income
support, health insurance, pension fund protec-
tion, job training, and job placement for work-
ers displaced or expected to be displaced due to
the denial of renewal, or anticipated denial of
renewal, of a permit for a major source or a
fossil fuel-fired power plant pursuant to section
165(f) or section 502(j) of the Clean Air Act;

(C) is supported by residents of impacted
environmental justice communities and other
impacted communities, as discerned through ac-
tive and inclusive solicitation and documenta-
tion of feedback and input from such residents
through a process established by the Advisory
Council;

(D) does not rely on fuels or technologies
that create environmental harm, including
greenhouse gas emissions and air pollution, or
contribute to health burdens on environmental
justice communities and impacted communities;

and

(E) results in a quantifiable improvement
to the health and well-being of residents of im-
pacted environmental justice communities and
other impacted communities as measured by the
Advisory Council; or

(2) a program supported by residents of im-
pacted environmental justice communities and other
impacted communities, as discerned through active
and inclusive solicitation and documentation of feed-
back and input from such residents through a proc-
ess established by the Advisory Council, that results
in a quantifiable improvement to the health and
well-being of residents of environmental justice com-
munities and other impacted communities, as meas-
ured by the Advisory Committee, including one
that—

(A) apportions funds to individuals who
face burdensome energy costs, including from
supply charges, delivery charges, capacity pay-
ments, and other costs that may or may not be
itemized in utility bills, or to individuals who
are expected to face burdensome costs due to
the denial of renewal, or anticipated denial of
renewal, of a permit for a fossil fuel-fired power
plant pursuant to section 165(f) or section
502(j) of the Clean Air Act, to reduce the cost
of—

(i) utility bills for ratepayers; or

(ii) the cost of rent for tenants in in-
stances in which utilities are included in
the tenant’s rent; or

(B) supports intervenor compensation op-
portunities to lower energy costs and reduce
pollution faced by residents of impacted envi-
ronmental justice communities and other im-
pacted communities.

(e) PROCESS.—Not later than 60 days after the date
of enactment of this section, the Administrator, in coordi-
nation with the Secretary and the Advisory Committee,
shall establish a process of applying for funds allocated
under subsection (b).

(d) SUBGRANTS AND CONTRACTS.—A recipient of
funds under this section may award such funds to commu-
nity groups and other entities as subgrants or contracts
in furtherance of a project described in subsection (e).

(e) JUST ENERGY TRANSITION FUND ADVISORY
COUNCIL.—
(1) ESTABLISHMENT.—The President shall es-
establish an advisory council, to be known as the
“Just Energy Transition Fund Advisory Council”.

(2) MEMBERSHIP.—The Advisory Council shall
be composed of 26 members who have knowledge of,
or experience relating to, the creation of, and transi-
tion of workers to, good-paying jobs to combat cli-
mate change and pollution, as well as the effect of
environmental conditions on environmental justice
communities, including—

(A) representatives of—

(i) community-based organizations
that carry out initiatives relating to envi-
ronmental justice and the just transition to
a clean energy economy, including grass-
roots organizations led by people of color;

(ii) labor unions;

(iii) State governments, Tribal govern-
ments, and local governments;

(iv) Indian Tribes and other Indige-
nous groups;

(v) nongovernmental and environ-
mental organizations; and
(vi) private sector organizations (including representatives of industries and businesses); and

(B) experts in the field of—

(i) socioeconomic analysis;

(ii) health and environmental effects;

(iii) exposure evaluation;

(iv) environmental law and civil rights law;

(v) environmental health science research; or

(vi) energy systems.

(3) SUBCOMMITTEES; WORKGROUPS.—

(A) ESTABLISHMENT.—The Advisory Council may establish any subcommittee or workgroup to assist the Advisory Council in carrying out any duty of the Advisory Council described in paragraph (4).

(B) REPORT.—Upon the request of the Advisory Council, each subcommittee or workgroup established by the Advisory Council under subparagraph (A) shall submit to the Advisory Council a report that contains—
(i) a description of each recommenda-
tion of the subcommittee or workgroup;

and

(ii) any advice requested by the Advi-
sory Council with respect to any duty of
the Advisory Council.

(4) DUTIES.—The Advisory Council shall pro-
vide independent advice and recommendations to the
Administrator and the Secretary with respect to—

(A) awarding grants through the Just En-
ergy Transition Fund to maximize progress to-
ward a transition to a clean energy economy
while maximizing benefits for environmental
justice communities, including by prioritizing
applications that will direct funds to support
entities that have urgently and expeditiously
pursued priorities that are aligned with the
projects and programs described in subsection
(b)(1) and (2); and

(B) measuring and evaluating the success
of grants and subgrants awarded through the
Just Energy Transition Fund.

(5) MEETINGS.—

(A) FREQUENCY.—
(i) IN GENERAL.—Subject to clause (ii), the Advisory Council shall meet biannually.

(ii) AUTHORITY OF ADMINISTRATOR.—The Administrator may require the Advisory Council to conduct additional meetings if the Administrator determines that the conduct of any additional meetings is necessary.

(B) PUBLIC PARTICIPATION.—

(i) IN GENERAL.—Subject to clause (ii), each meeting of the Advisory Council shall be open to the public to provide the public an opportunity—

(I) to submit comments to the Advisory Council; and

(II) to appear before the Advisory Council.

(ii) AUTHORITY OF ADMINISTRATOR.—The Administrator may close any meeting, or portion of any meeting, of the Advisory Council to the public.

(7) **TRAVEL EXPENSES.**—The Administrator may provide to any member of the Advisory Council travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Advisory Council.

(g) **DEFINITIONS.**—In this section:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) **ADVISORY COUNCIL.**—The term “Advisory Council” means the Just Energy Transition Fund Advisory Council established under subsection (f) of this section.

(2) **SECRETARY.**—The term “Secretary” means the Secretary of the Labor.

(3) **STATE.**—The term “State” means each of the 50 States and the District of Columbia.

(4) **TERRITORY.**—The term “territory” means the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Commonwealth of Puerto Rico.
(5) Tribal Government.—The term “Tribal government” means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

SEC. 5. CONSIDERATION OF CUMULATIVE IMPACTS IN POWER PLANT PERMITTING.

(a) Permits Generally.—

(1) Regulations.—Section 502(b) of the Clean Air Act (42 U.S.C. 7661a(b)) is amended by adding after paragraph (10) the following:

“(11) A requirement for performing cumulative impacts analysis in accordance with subsection (j), if applicable.”.

(2) Cumulative Impacts Analysis.—Section 502 of the Clean Air Act (42 U.S.C. 7661a) is amended by adding at the end the following:

“(j) Cumulative Impacts Analysis.—

“(1) In general.—

“(A) Permit requirement.—Whenever an applicant seeks a permit or renewal of a per-
mit for a fossil fuel-fired power plant, the permitting authority shall require such applicant to utilize a neutral third-party assessor to perform, in consultation with a community intervenor, an analysis of—

“(i) the cumulative impacts of pollution, including the combined past, present, and reasonably anticipated future emissions, from all stationary or mobile sources, affecting the area within five miles of the fossil fuel-fired power plant proposed to be permitted;

“(ii) for each census block group or Tribal census block group (as those terms are defined by the Director of the Bureau of the Census) located in, or adjacent to, such area, the cumulative impacts of pollution, including the combined past, present, and reasonably anticipated future emissions, from all stationary or mobile sources; and

“(iii) alternative projects sourced with air pollution-free renewable energy.

“(B) ADDITIONAL REQUIREMENT.—One year after this section takes effect and at least
every five years thereafter, the permitting au-
authority must ensure that a fossil fuel-fired
power plant undergoes a cumulative impacts
analysis as described by this subsection if the
fossil fuel-fired power plant is—

“(i) located, or proposed to be located,
within one mile of a major source; and

“(ii) not subject to permitting require-
ments pursuant to this title.

“(C) CONSIDERATIONS.—A cumulative im-
pacts analysis under subparagraph (A) shall in-
clude consideration of—

“(i) community demographics and lo-
locations of community exposure points, in-
cluding schools, day care centers, nursing
homes, hospitals, health clinics, places of
religious worship, parks, playgrounds, and
community centers;

“(ii) air quality and any potential ef-
fec ts on that air quality of emissions of air
pollutants from the fossil fuel-fired power
plant proposed to be permitted, including
in combination with existing sources of pol-
lutants;
“(iii) the potential effects on soil quality and water quality of emissions of lead and other air pollutants that could contaminate soil or water from the fossil fuel-fired power plant proposed to be permitted, including in combination with existing sources of pollutants;

“(iv) public health and any potential effects on public health from the emissions of pollutants from the fossil fuel-fired power plant proposed to be permitted, including in combination with existing sources of pollutants;

“(v) the potential adverse impacts on health and well-being of residents of impacted environmental justice communities and populations with heightened vulnerability to pollution and associated health risks, which may be due to socioeconomic characteristics including housing insecurity, barriers to receive quality healthcare or afford health insurance, energy cost burdens that limit use of heat and air conditioning, long-term impacts of siting polluting sources in environmental justice
communities, and public disinvestment and redlining;

“(vi) the potential effects of any proposed action on environmental justice communities, including if the action causes or exacerbates a disproportionate or inequitable burden on the environmental justice community; and

“(vii) shall be based on an analysis of data that accurately describes the potential cumulative impacts of the proposed action, and may include a supplemental qualitative analysis.

“(D) PUBLIC ENGAGEMENT AND PROCEDURAL JUSTICE PROCESS.—The cumulative impacts analysis under subparagraph (A) shall include a public engagement and procedural justice process, to include—

“(i) the active and inclusive solicitation and receipt of, and to the greatest extent practicable, action to address, input and feedback from residents of impacted environmental justice communities and other impacted communities, to be documented and provided to the permitting au-
authority in the final cumulative impacts
analysis;

“(ii) documentation and investigation
of claims brought by residents of impacted
environmental justice communities and im-
pacted communities, including the appli-
cant’s proposed or agreed-upon mitiga-
tions, whether and how each claim was ad-
dressed, and documentation of the satisfac-
tion or dissatisfaction of such residents
with the investigation of claims and cor-
responding responses, if any;

“(iii) advanced notification to resi-
dents of impacted environmental justice
communities and other impacted commu-
nities through various means including but
not limited to written notification, local
news advertisements, and canvassers;

“(iv) multiple opportunities for resi-
dents of impacted environmental justice
communities and other impacted commu-
nities to participate;

“(v) multiple media and formats for
participation, including in-person and re-
move options, which shall include large and
small group settings, mail-in feedback opportunities, and other such avenues to ensure that health, socioeconomics, lack of technological resources, and settings that are unwelcoming or unfamiliar to residents of impacted environmental justice communities are not barriers to participation;

“(vi) transmission of a preliminary cumulative impacts analysis at least 30 days in advance of any public comment period or public comment event to—

“(I) the permitting authority for online publication;

“(II) community groups and community representatives of impacted environmental justice communities and other impacted communities; and

“(III) to a reasonable extent, the residents of impacted environmental justice communities and other impacted communities; and

“(vii) in instances in which a resident participating in the process outlined in this paragraph stands to benefit, financially or
otherwise, from the permit under consideration, disclosure of such benefit in the final cumulative impacts analysis.

“(2) PROHIBITION.—Except as provided in paragraph (3), a permitting authority shall not grant a permit or renewal or allow operation of a fossil fuel-fired power plant unless the cumulative impacts analysis under paragraph (1) indicates a reasonable certainty that such permit, renewal, or operation will result in no harm to the health of the general population, or to any potentially exposed or susceptible subpopulation, including environmental justice communities, of a census block group or Tribal census block group described in paragraph (1)(A), and the public engagement and procedural justice process described in paragraph (1)(C) is fulfilled.

“(3) CRITICAL FACILITIES EXEMPTION.—A fossil fuel-fired power plant that is a boiler serving a critical facility may only be denied a permit or be otherwise prohibited from operation if the cumulative impact analysis under paragraph (1) indicates a certainty that the permit or renewal will result in harm to the health of the general population, or to any potentially exposed or susceptible subpopulation,
including environmental justice communities, of a
census block group or Tribal census block group de-
scribed in paragraph (1)(A), and the alternative is
deemed to be of reasonable cost.”.

(b) PRECONSTRUCTION PERMITS.—Section 165 of
the Clean Air Act (42 U.S.C. 7475) is amended by adding
at the end the following:

“(f) CUMULATIVE IMPACTS.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—Whenever an appli-
cant seeks a permit under this section or re-
newal of such a permit for a fossil fuel-fired
power plant within one mile of a fossil fuel-fired
power plant or a major source (as defined in
section 112), the permitting authority shall re-
quire such applicant to perform an analysis of
the cumulative impacts for each census block
group or Tribal census block group (as those
terms are defined by the Director of the Bureau
of the Census) located in, or immediately adja-
cent to, the area in which the fossil fuel-fired
power plant to be permitted is, or is proposed
to be, located.

“(B) APPLICABILITY OF CERTAIN PROVI-
sIONS.—The provisions of subparagraphs (B)
and (C) of section 502(j)(1) shall apply to any cumulative impacts analysis performed under this subsection to the same extent and in the same manner as such provisions apply to a cumulative impacts analysis performed under such section 502(j)(1).

“(2) PROHIBITION.—A permitting authority shall not grant a permit or renewal described in paragraph (1)(A) unless the cumulative impacts analysis under paragraph (1) indicates a reasonable certainty that the permit or renewal will result in no harm to the health of the general population, or to any potentially exposed or susceptible subpopulation, including environmental justice communities, of a census block group or Tribal census block group described in paragraph (1)(A).”.

(c) TRANSITIONAL PROVISION.—Section 165(f) and section 502(j) of the Clean Air Act (as added by this section) shall apply with respect to a fossil fuel-fired power plant for which, on or before the date of enactment of this Act, a permit has been issued pursuant to section 165 or title V of the Clean Air Act (42 U.S.C. 7475, 7661 et seq.), but for which construction has not commenced as of such date.