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January 31, 2023

Shawn LaTourette, Commissioner
NJ Department of Environmental Protection
Mail Code 401-07
401 East State Street
PO Box 402
Trenton, NJ 08625-0420

RE: Deficiencies with AO 2021-25 hearing notice for CPV's Woodbridge/Keasbey Energy

Commissioner LaTourette:

For over 80 years, the NAACP Perth Amboy Area Branch has built and grown on the collective courage of men, women, and young adults who decided to stand for and strong to champion what's right and just. Today, we continue that work and write you with deep concern about the inconsistent and unlawful process currently being used by the NJ Department of Environmental Protection (DEP) and Competitive Power Ventures (CPV) to cut corners in their environmental justice review of a 657-megawatt gas-fired power plant proposed for the Keasbey section of Woodbridge, an overburdened community under the NJ Environmental Justice law (EJ Law).

This review comes at a time when New Jersey must move away from fossil fuels to meet its climate goals, and when DEP is proposing new emission limits on fossil fuel plants to reach those goals, CPV is asking to more than double the emissions of its Woodbridge facility. Their proposal for a second gas plant in Keasbey is both offensive and dangerous, and it clearly goes against DEP's stated principles of environmental justice. That's why hundreds of New Jerseyans have already rallied and spoken out against this ill-conceived proposal, numerous media outlets have covered this community outcry, and twelve different elected government bodies in four different New Jersey counties passed resolutions opposing CPV's project.

Unfortunately, the applicant has disseminated confusing, deficient, and inaccurate messages regarding their project. Attached to this letter is a notice that we received on January 18, 2023, regarding CPV's air permit application.

The following are what we believe are some of its errors and deficiencies:

1. The notice lists **incorrect years** for the hearing, the beginning of the public comment period, and the end of the public comment period (2022 instead of 2023).

2. The notice directs readers to an internet website, stating that it contains the “draft Title V Air Permit Application,” and encourages interested parties to review the document. However, **the link provided¹ does not direct a user to the document.** Rather, it connects to a list of press releases, with the top item being a link labeled “Public Notice.” That link² takes the user back to the notice, and the application is not available.
3. The notice also indicates that printed copies of the draft permit application are “currently available at the following location: Woodbridge Municipal Building, 1 Main Street, Woodbridge, NJ 07095.” However, one of our members visited the building on January 27, the first day of the public comment period, and after speaking at length with the Township Clerk’s Office and the Engineering Department, was told that the **municipal government did not have the document and could not produce a copy of it.** The Engineering Department noted that they also tried to obtain the document from the CPV website, but were not able to find it.
4. **Notice of this hearing was first issued on January 18, 2023, 41 days before the hearing,** and nineteen days late, if the applicant is seeking consistency with NJSA 13:1D-160(3).

Public notice “consistent with the EJ Law... to maximize public participation,” is required by your order, according to the DEP’s “Administrative Order 2021-25 – FAQs,”³ and the EJ Law is clear that notice must be published “not less than 60 days prior to the public hearing.”

Thus far, the decisions made by CPV are minimizing public participation, not maximizing it.

The applicant’s webpage for this project⁴ not been updated to reflect the active public comment period, and they further confuse the public by promoting the notice of a hearing that occurred in July 2022, making no mention of a second gas-fired power plant and offering no information on the upcoming hearing.

The EJ Law requires public notices be placed in “at least two newspapers circulating within the overburdened community.” According to on the NJ Press Association website,⁵ the only public notice of the hearing appeared in the Courier News, which is not circulated in Woodbridge. On January 27, the Home News Tribune ran eight different Woodbridge Township notices, while CPV’s notice ran in the Courier News, where it was seen predominantly by residents of Somerset County. CPV ought to know that the Home News Tribune is Woodbridge Township’s paper of record, as they have previously purchased advertisements in that publication. Likewise, **we have seen no evidence that the requirement to publish the hearing notice in a local non-English language newspaper has been satisfied.** According to the US Census, 44.8% of Woodbridge Township residents reported speaking a language other than English at home.⁶

¹ <https://cpv.com/category/press-releases/>

² <https://cpv.com/2023/01/18/public-notice/>

³ <https://dep.nj.gov/wp-content/uploads/ej/docs/njdep-ao-2021-25-faqs.pdf>

⁴ <https://CPVWoodbridge.com>

⁵ <https://www.njpublicnotices.com/>

⁶ <https://www.census.gov/quickfacts/woodbridgetownshipmiddlesexcountynewjersey>

Based on prior experience with the applicant and its approach to AO 2021-25 hearings, we believe they are avoiding meaningful engagement by holding **a single English-only, online-only videoconference hearing using an unpopular software platform that can be hard to use.**

While it is important to provide remote access options, **there is no good reason to not also offer in-person access to this hearing** at one or more suitable locations for members of the public who do not have access to, or prefer not to use, an electronic communications device.

Woodbridge Township routinely holds public meetings of its Council in-person at Town Hall. The New Jersey Turnpike Authority also holds monthly in-person public meetings at its headquarters in Woodbridge, while simultaneously offering a remote access telephone option. DEP also routinely holds “hybrid” public discussions that offer both remote and in-person access,⁷ and the agency is currently advertising an in-person AO 2021-25 hearing right here in Middlesex County regarding a different project,⁸ just a few days after CPV’s online-only hearing.

While COVID-19 remains a community concern, it is not an excuse to minimize participation, or circumvent the intent of the EJ Law. Without a doubt, **the hybrid option would maximize participation by offering both in-person and remote.** It is also important to select a communications platform that is already widely used by the public. Zoom is by far the most popular videoconferencing platform in the country, with 58.36% of market-share. Indeed, the DEP has used Zoom to conduct its own hybrid engagement sessions on environmental justice.⁹

However, the applicant proposes that the one and only hearing be held using Microsoft Teams, which holds just 9.54% of the market-share, meaning that nine out of ten residents are likely to be unfamiliar with the platform. Those unable to download, install, or use the Teams application due to limitations of their devices may find themselves effectively excluded from the hearing. If they attempt to dial-in via telephone, they may be charged by the minute to attend as local dial-in numbers are not available. **Those who don’t speak English will also be effectively excluded, unless something is affirmatively done to accommodate them.**

The EJ law also requires that the “location” of a hearing be included in the notice. While no physical location can be listed for a virtual meeting, the best practice is clearly to include a direct uniform resource locator (URL) as well as a telephone number, meeting ID, and passcode (if necessary). However, CPV chose not to include this information in their notice, adding another step to the participation process, by requesting that users first email CPV to attend or participate in the hearing. Interested individuals should be able to join the hearing directly.

We must also note with disappointment that **the DEP has given members of the public a “runaround” by failing to honor commitments to dialogue and answer questions, including questions about hearing accessibility and community engagement.**

⁷ <https://www.nj.gov/dep/srp/brownfields/roundtables/index.html>

⁸ <https://dep.nj.gov/wp-content/uploads/ej/veolia-middlesex-notice.pdf>

⁹ <https://dep.nj.gov/ej/meetings/>

Beginning on February 17, 2022, officials in the Division of Air Quality and the Office of Permitting & Project Navigation repeatedly promised, both verbally and in writing, to arrange a meeting to discuss this project with residents who were opposed to it. After soliciting questions from the opponents, and promising to provide answers to them, on January 18, 2023, the DEP abruptly declined to meet with the opponents, and left their questions unanswered.

The DEP also has not taken meaningful steps to promote or facilitate public participation in the hearing. The department did not include CPV's hearing in its January 18, 2023 bi-monthly bulletin,¹⁰ nor did the hearing make it into the calendar prominently featured in the January 19, 2023 Office of Environmental Justice newsletter. We also noted that DEP's website¹¹ misspells the name of the overburdened community that will be most affected by this project: Keasbey.

The NAACP Perth Amboy Area Branch respectfully requests that CPV's hearing be postponed and properly noticed for a new date after the EJ Law has been implemented. We further request that DEP require CPV to extend its public comment period pursuant to AO 2021-25, as more time is needed for our members, our partners, and countless other engaged residents and groups, to obtain and review the air permit application. We also strongly urge scheduling multiple hybrid hearings, use of the Zoom platform, widespread promotion of these hearings through the DEP's communications channels, and comprehensive public notices with clear instructions and accurate information. It is imperative that all hearings on this project be facilitated with accommodations for remote access and participation, in-person participation at locations in both Woodbridge and Perth Amboy, and live translation for Spanish speakers.

Thank you for your time and we hope that you will respond to this letter as soon as possible.

Sincerely,



Jimmy Dabrowski, Secretary,
on behalf of Rev. Donna Stewart, President
NAACP Perth Amboy Area Branch

cc: Governor Philip D. Murphy
Chief Counsel Parimal Garg
Scott Jkellberg, Competitive Power Ventures (for inclusion in official record as a comment)

¹⁰ https://dep.nj.gov/wp-content/uploads/bulletin/bu2023_0118.pdf

¹¹ <https://dep.nj.gov/ej/meetings/#njdep-ej-publicmeeting>