U.S. Department of Transportation

Office of the Secretary of Transportation

EPA United States Environmental Protection Agency

JUN 14 2016

In Reply Refer To:
DOT# 2016-0361
EPA File Nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3

W. Kevin Hughes, Chairman
David Collins, Executive Secretary
William Donald Schaefer Tower
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

Subject: Notification of Acceptance for Investigation of Administrative Complaint

Dear Messrs. Hughes and Collins:

This is to notify you that the U.S. Department of Transportation (DOT), Departmental Office of Civil Rights (DOCR) with the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), have accepted for investigation the complaint filed by Earthjustice on behalf of the Brandywine TB Coalition and Patuxent Riverkeeper against the Maryland Public Service Commission (PSC), the Maryland Department of the Environment (MDE), and the Maryland Department of Natural Resources (MDNR) (collectively, "recipients"). The complaint was received on May 11, 2016, and alleges violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 Code of Federal Regulations, Part 21) and EPA (40 Code of Federal Regulations, Part 7).

Pursuant to DOT's and EPA's nondiscrimination regulations, the Offices of Civil Rights conduct preliminary reviews of administrative complaints received for acceptance, rejection, or referral to the appropriate agency. *See* 49 C.F.R. § 21.11(c); *see also* 40 C.F.R. § 7.120(d)(1). Complaints must meet the Agencies' jurisdictional requirements to be accepted for investigation. After careful consideration, DOT and EPA have determined that the complaint meets the jurisdictional requirements of both agencies, and therefore, the complaint will be jointly investigated.

Accordingly, the investigation will focus on:

1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

The investigation will be conducted in accordance with the DOT's *External Civil Rights Complaint Processing Manual*, and EPA OCR's *Interim Case Resolution Manual*. The decision to investigate the issues above does not constitute a decision on the merits of the complaint. DOT and EPA will begin a joint process to gather the relevant information, discuss the matter further with you or your designee, if appropriate, and determine next steps utilizing the Agencies' internal procedures. In the intervening time, DOT and EPA will provide you with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of the letter. *See, e.g.,* 40 CFR § 7.120(d)(1)(ii-iii).

Both DOT's and EPA's nondiscrimination regulations provide that Offices of Civil Rights will attempt to resolve complaints informally whenever possible. 49 C.F.R. § 21.11(d); 40 C.F.R. § 7.120(d)(2). Accordingly, DOT and EPA are willing to discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi. We will be contacting both you and representatives of the complainants in the future to discuss potential interest in pursuing ADR, as well as your interest in entering into informal resolution discussions.

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 49 C.F.R. § 21.11(e); *see also* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with DOT and/or EPA. Any questions or concerns that you have regarding the investigative process and your rights can be discussed with the investigators.

Please do not hesitate to contact Ryan Fitzpatrick, Lead Civil Rights Analyst in DOT's Departmental Office of Civil Rights, or Brittany Martinez, Case Manager in EPA's Office of Civil Rights, with any questions about the investigation. Mr. Fitzpatrick can be reached at (202) 366-1979, or ryan.fitzpatrick@dot.gov. Ms. Martinez can be reached at (202) 564-0727, or martinez.brittany@epa.gov.

Sincerely,

Yvette Rivera
Associate Director
Department Office of Civil Rights, DOT

Lilian S. Dorka
Deputy Director, Interim Director
Office of Civil Rights, EPA

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