



U.S. Department
of Transportation
**Federal Transit
Administration**

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Mr. Jon Frey
Pennsylvania Transit Expansion Coalition
P.O. Box 76
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MAY 23 2012

Dear Mr. Frey:

We received your letter dated May 4, 2012 to Tony Cho of my staff, which outlined your concerns about the revised Delaware Valley Regional Planning Commission (DVRPC) Public Participation Plan (PPP) and public participation process. We are writing to respond to each of your stated items.

Public Comment Period

The revised PPP comment period opened on Monday, January 30, 2012, and closed on Wednesday, March 14, 2012. That period included 2 days in January, 29 days in February, and 14 days in March, for a total of 45 days, meeting the required minimum under 23 CFR 450.316(a). Furthermore, at the April 26, 2012 DVRPC Board Meeting, the DVRPC staff included PA-TEC's March 15, 2012 comments, even though they were technically late, for Board review before the revised PPP was adopted.

Sufficiency of the Revised PPP

As noted in our letter dated February 10, 2012, there are no "formal review" procedures which authorize the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) to make "formal determinations" on the substance of an MPO's PPP or its Memorandums of Understanding. 23 CFR 450.316(a) requires that "Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable." (Emphasis added). DVRPC has submitted copies of the new PPP to FHWA and FTA, and the PPP has been posted to the DVRPC website.

Our regulations in 23 CFR 450.316 do not require that a revised PPP's processes must equate with those offered by its predecessor. Plans developed and approved by the MPO must only meet the purposes and minimum requirements set forth in the regulation to provide the public with "reasonable opportunities to be involved in the metropolitan transportation planning process" 23 CFR 450.316(a).

With the PPP having been approved less than 30 days ago, your characterization of the new PPP as a "downgrade" is premature. Without allowing sufficient time for implementation, there is no basis for comparing the effectiveness of the current PPP with the previous version that included a Regional Citizens Committee (RCC). Your single (and inaccurate) example of the South Jersey Bus Rapid Transit project presentation involved a DVRPC Board action to open a 30-day public comment period for project inclusion into the Long Range Plan, rather than a TIP amendment.

Alleged TIP Modification Violations

In our letter of February 10, 2012, we disagreed with your conclusions that the MOUs were integral parts of the prior PPP. In the previous PPP, MOUs were only mentioned once. Therefore, the time period between the final RCC meeting and the adoption of the revised MOUs is inconsequential.

FTA Authority

Finally, you assert that FTA indicated it "has no mechanism or authority to issue a final determination or enforce any FTA regulation." This assertion is incorrect; the FTA and FHWA February 10, 2012 response applied only to PA-TEC's request for a "formal review." Our response did not state that FTA and FHWA lacked the ability to enforce "any regulation." To the contrary, FTA and FHWA conduct joint oversight of the metropolitan planning process as authorized and required by 23 CFR Part 450. This process allows FTA/FHWA to require corrective actions or to withhold Federal funds.

We appreciate PA-TEC's ongoing active input and concerns over DVRPC's public involvement process. However, the process by which the new PPP was adopted has met all Federal requirements, and at the present time we consider this matter closed.

Sincerely,



Brigid Hynes-Cherin
Regional Administrator

cc: Barry Seymour, DVRPC
Ernest Blais, FHWA-NJ
Renee Sigel, FHWA-PA



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Tony Cho
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Federal Transit Administration, Region III
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May 4, 2012

Mr. Cho:

As you are aware, on Thursday April 27, 2012, the Delaware Valley Regional Planning Commission (DVRPC) adopted a new public participation plan (PPP) which included the creation of a new Public Participation Task Force (PPTF) which replaced the former Regional Citizens Committee. I am asking the Federal Transit Administration to address and respond as necessary to the following items of concern:

1. DVRPC did not meet the minimum 45 day public comment period as required by 23 CFR §450.316. The public comment period for the revised PPP opened on Monday January 30, 2012 and closed on Wednesday March 14, 2012 for a total of 44 days.
2. DVRPC's revised PPP provides insufficient opportunities. The new plan has reduced public input instead of enhancing and improving the former plan. Prior to January 2011, the primary methods of public participation at DVRPC existed at the RCC with the following characteristics:
 - Open forum discussion of TIP action items
 - Equal voting rights on TIP amendments for RCC members, which existed with by-laws that prevented special interest groups from stuffing the ballot box
 - High level of interaction between DVRPC's planners and materials, and the public
 - Membership diversity through representation of many advocacy groups
 - Apolitical membership and process
 - Ability to submit policy suggestions and resolutions, developed through consensus to the DVRPC board of directors
 - Representation on the DVRPC board of directors

The New PPTF and PPP are a striking departure and downgrade of public participation. In addition, DVRPC executives have reduced the value of public input at board meetings by limiting public input to the opening of the meeting. Prior to this change, the public was allowed to comment on TIP amendments and ask questions of DVRPC staff and board members during individual agenda items throughout the board meeting. Federal policy places great emphasis on improving public participation, not reducing it.



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A summary of the new characteristics of public input following the adoption of the new PPP are:

- Public comment at the open of board meetings only. No comments allowed during discussion of TIP amendments
- Online web commenting form, where questions are often answered after the board votes on a TIP amendment
- A members-only Public Participation Task Force, where members are appointed by an unknown evaluation system by DVRPC staff.
- Little to no interaction with DVRPC staff, planners and materials with the general public.

EXAMPLE: At the April 2012 board of directors meeting, DVRPC staff made a presentation on a TIP ammendment which added a new bus rapid transit study to the TIP in Southern New Jersey, where an existing study is already being conducted by the DRPA for an extension of PATCO or Riverline service. Following the presentation, there was no opportunity for the public to ask any questions or make any comments to the planners, staff or board of directors prior to the vote.

3. DVRPC has made several TIP modifications in violation of their former PPP. DVRPC's prior PPP specifically stated that the RCC would function as a public input mechanism for all TIP modifications and amendments. The final RCC meeting was held in June 2011. DVRPC modified its Memorandum of Understanding (MOU) to eliminate the RCC at the January 2012 DVRPC Board meeting. The revised MOU was not approved by member agencies until February 2012.

In your February 10, 2012 letter to John Scott, you had indicated that the FTA has no mechanism or authority to issue a final determination or enforce any FTA regulation. This is immaterial to me. DVRPC has laws set by the FTA. Please provide me with a detailed explanation of how the laws, regulations and rules are enforced, and by whom. If the FTA is not capable of enforcement of its rules, please direct me to the responsible federal agency.

Thank you

Jon Frey