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Attorneys for Plaintiff

Ironbound Community Corporation,  
Plaintiff

vs.

Passaic Valley Sewerage Commission,  
Skanska/Railroad SPGF JV,  
Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, ESSEX COUNTY

Docket No.

CIVIL ACTION

COMPLAINT IN LIEU OF PREROGATIVE  
WRITS

Plaintiff Ironbound Community Corporation, a nonprofit corporation located in Newark, New Jersey, by way of a Complaint in Lieu of Prerogative Writs against Defendants Passaic Valley Sewerage Commission and Skanska/Railroad SPGF JV, alleges as follows:

### **PARTIES**

1. Plaintiff Ironbound Community Corporation (“ICC”) is a nonprofit organization with headquarters at 317 Elm Street, Newark, New Jersey 07105. ICC’s primary purpose is to improve the quality of life of the residents in the Ironbound neighborhood of Newark, including advocacy to reduce pollution from the multiple industrial sources in the Ironbound. ICC’s staff and the residents it serves live within the service territory of Defendant Passaic Valley Sewerage Commission. *See* Declaration of Hazel Applewhite (attached as Ex. 1); Declaration of Cynthia Mellon (attached as Ex. 2).

2. Defendant Passaic Valley Sewerage Commission (“PVSC” or “the Commission”) is a body politic and corporate of New Jersey, created by N.J.S.A. 58:14-2, located at 600 Wilson Avenue, Newark, New Jersey 07105.

3. Defendant Skanska/Railroad SPGF JV is a New Jersey Public Works Registered Contractor and is the assigned contractor for contract B040 for construction of a gas-fired power plant for PVSC. Its registered address is 7520 Astoria Boulevard, Suite 200, East Elmhurst, New York 11370. Skanska/Railroad SPGF JV is included in this action as the assigned contractor for the construction contract that is at the heart of this action.

### **FACTUAL AND PROCEDURAL HISTORY**

4. This action in lieu of prerogative writs challenges PVSC’s June 12, 2025, approval of a resolution awarding a construction contract for what would be the fourth gas-fired power plant to be constructed in the Ironbound neighborhood of Newark.

#### **Industrial Concentration in the Ironbound**

5. The Ironbound neighborhood is home to approximately 50,000 primarily Black and Brown working-class residents and is flanked by one of the densest industrial corridors in the state. Pollution that emanates from this industrial corridor adversely affects the health and wellbeing of Ironbound residents and residents of surrounding neighborhoods.

6. In 2020, the New Jersey Legislature passed the Environmental Justice Law (“EJ Law”), N.J.S.A. 13:1D-157 et seq., in an effort to address the historical injustice of the concentration of polluting facilities in New Jersey’s poorer communities and communities of color. The EJ Law does this by requiring additional substantive and procedural requirements for processing environmental permits for enumerated categories of facilities with harmful environmental

impacts, including by preventing the construction of new polluting facilities in overburdened communities.

7. Among all New Jersey municipalities, Newark has the highest number of EJ Law-regulated facilities in the state (48), twice as many as any other municipality. And Newark's polluting facilities are disproportionately concentrated in the Ironbound. The two zip codes that cover the Ironbound have the first and second-highest number of EJ Law-regulated facilities among all zip codes in the state (collectively, 44 facilities in both).

8. These facilities include the largest garbage incinerator in the state, three gas-fired power plants, and the fifth-largest wastewater treatment plant in the country, operated by PVSC. PVSC's wastewater treatment plant is permitted to emit over 300 tons per year of health-harming pollution like carbon monoxide and smog-forming nitrogen oxides.

### **PVSC's Proposal to Build a Gas-Fired Power Plant**

9. When Hurricane Sandy struck New Jersey in 2012, the wastewater treatment plant operated by PVSC lost power from the electrical grid for approximately two days.

10. Soon after that incident, PVSC applied for funding from the Federal Emergency Management Agency ("FEMA") for an on-site resiliency project that included the installation of flood walls and flood water pumps, the reconfiguration of facility drainage systems, and installation of an on-site source of electrical power, which PVSC named the standby power generating facility ("SPGF"). The application proposed that the SPGF would consist of an on-site gas-fired power plant.

11. On July 10, 2019, months before applying to the New Jersey Department of Environmental Protection ("DEP") for the permit to operate the SPGF, and over five years prior to DEP's granting of that permit, PVSC entered into a contract with Siemens Energy, Inc., to

purchase three methane gas-burning turbines for use in the SPGF. The three turbines collectively have a power capacity of 84 megawatts (“MW”).

12. On January 27, 2020, PVSC first applied to DEP for a modification of its Clean Air Act permit that would allow for the operation of the 84 MW gas plant.

13. On January 14, 2021, PVSC subsequently revised and resubmitted this modification application. PVSC amended the application to seek approval to operate the gas plant not only for emergency and maintenance purposes, but also to allow the plant to provide electricity to the broader power grid during periods of peak demand unrelated to storm or emergency events, with PVSC receiving compensation from the utility in return. In addition, PVSC also sought to use the gas plant for utility demand response purposes, under which PVSC would disconnect from the grid and provide its own power from the gas plant during times unrelated to storms or emergencies, and in return, receive compensation from the utility in the form of lower electricity prices.

14. On July 2, 2021, PVSC again revised and resubmitted the modification application. PVSC explained in that application that, after discussing with community representatives and with DEP, it was removing the peak demand operating scenario requested in the prior application that would allow PVSC to provide power to the grid. This application nevertheless kept PVSC’s request to disconnect from the grid and use the gas plant in non-emergency scenarios for demand response.

15. On December 15, 2021, DEP sent a letter to PVSC notifying the Commission that the permit application was subject to the September 20, 2021, Administrative Order No. 2021-25 (“AO-25”), which DEP issued to implement portions of the 2020 EJ Law during the pendency of the rulemaking process for the EJ Law’s implementing rules. DEP determined that AO-25

applied because the gas plant would be a new major source facility in an overburdened community, and that PVSC would therefore have to prepare a compliance statement, hold a public hearing, and open a public comment period about the permit application under AO-25.

16. In response to public questioning of the need to build a fourth gas plant in the Ironbound, in February 2022, PVSC released a Request for Proposals for a Renewable Energy Power Generation System (“RFP”), seeking proposals from engineering firms for systems to provide PVSC’s emergency power needs partly or entirely through renewable, non-polluting energy systems, instead of solely from the gas plant. The main requirement of the RFP was that the power system must be able to provide 34 MW of electricity for a minimum period of two weeks. The RFP said that PVSC would also consider proposals from systems that provide less than 34 MW of power and/or less than two weeks of duration.

17. On or around March 30, 2022, PVSC published its AO-25 Compliance Statement and opened a public comment period about the permit application. In that statement, PVSC noted that its wastewater treatment plant had lost grid power during Hurricane Sandy for approximately two days, but then indicated that a design requirement for the SPGF was that it must provide 34 MW of electric power – the wastewater treatment plant’s expected maximum power load – for two weeks. The AO-25 Compliance Statement provides no explanation about why PVSC chose to require a full two weeks’ worth of the forecasted peak power demand as a mandatory criterion for the SPGF.

18. The AO-25 Compliance Statement explained that, because of this 34 MW for two weeks design requirement, PVSC had chosen to construct an 84 MW gas plant to meet its emergency power needs. The Compliance Statement then went on to reject less polluting alternatives, like

battery storage, to conclude that only a methane gas-burning power plant would be able to provide two weeks' worth of power.

19. The AO-25 Compliance Statement continued to note that PVSC intended to use the gas plant during non-emergencies for demand response purposes.

20. On April 26, 2022, PVSC held a virtual public hearing as required under AO-25. At that hearing there were 202 attendees and 53 speakers, of which 50 speakers opposed the gas plant proposal, including members of ICC.

21. PVSC also received a total of 446 written comments, all but four of which opposed the construction of the gas plant.

22. The comments in opposition include comments submitted by ICC on July 1, 2022, that were supported by the expert report of Bill Powers, a registered professional engineer with experience in the fields of energy and environmental engineering, air emissions control, and regional energy planning ("2022 Powers Expert Report").

23. In written and oral comments, ICC, the 2022 Powers Expert Report, and others argued that cheaper, more resilient, and less polluting alternatives like battery storage were the superior method to supply PVSC's emergency power needs, and that PVSC arbitrarily rejected these superior alternatives by setting a design requirement (34 MW for two weeks) that unnecessarily overestimated both the amount and duration of power that PVSC would need in the event of another emergency.

24. ICC, the 2022 Powers Expert Report, and others also commented that substation flooding issue, the proximate cause of the grid outage during Hurricane Sandy, has largely been resolved through the investment of billions into grid hardening projects by PSE&G, the electric utility that serves PVSC. These grid hardening projects included raising substations above the highest

expected flood levels. These comments noted that thanks to these improvements, not a single substation lost power when Hurricane Ida hit New Jersey in 2021.

25. The 2022 Powers Expert Report concluded that the longest credible grid outage possibility for PVSC was 12 hours, not two weeks, and that on-site battery storage could easily meet this 12-hour requirement. The report came to this conclusion because the substation flooding issue had been resolved due to PSE&G's grid hardening and substation raising efforts, and because the maximum duration of other, non-flood-related grid outage was just a few hours.

26. The 2022 Powers Expert Report also highlighted a variety of operational changes that PVSC could implement in order to reduce the facility's maximum electric load.

27. The 2022 ICC AO-25 Comments and 2022 Powers Expert Report further noted that, according to FEMA guidance on emergency power systems, the gas pipeline network is no more immune from interruption than the electrical grid during storms or other emergencies, and that on-site battery storage would be a more resilient option for emergency power needs.

28. On September 9, 2022, PVSC published its response to comments received during the AO-25 process. While the response-to-comments document recognized that ICC and the 2022 Powers Expert Report questioned PVSC's excessive two-week design requirement, none of PVSC's responses recognized, let alone attempted to justify, PVSC's decision to require two weeks of power as a minimum requirement.

29. In an October 13, 2022, public presentation about the RFP for renewable alternatives to the gas plant, PVSC provided an overview of the project proposals it had received. These included projects in which renewable systems could provide PVSC's desired 34 MW of power, but for less than the uninterrupted two weeks that was part of the RFP's design requirement. Because of PVSC's two-week design requirement, most of the proposals kept the gas plant on

the site, meaning that the 1.5 acres of land proposed for the gas plant was not considered available for non-polluting alternatives like battery storage.

30. On December 22, 2022, DEP sent a letter to PVSC seeking more information about its permit application, including asking PVSC to “clarify the basis for PVSC’s requirement for two (2) weeks of backup power capacity in its assessment of the feasibility of renewable energy alternatives. Similarly, clarify the basis for the need for thirty-four (34) megawatts (MWs) for maintenance of operations.”

31. On January 11, 2023, PVSC provided a letter response to DEP. In response to DEP’s question regarding the two-week design requirement, PVSC notes that “Sandy led to PVSC losing power for over 48 hours” but provides no justification for its requirement that the power source run for two weeks.

32. In response to DEP’s question regarding the 34 MW requirement, PVSC notes that “[t]he need for power is greatest during inclement weather, when sewerage flow through PVSC must be maintained to the maximum extent possible,” but PVSC does not explain why it would need to operate at maximum capacity for a full two weeks.

33. On July 18, 2024, DEP published its Environmental Justice Decision concerning the PVSC permit application, outlining its decision to allow the permit approval process to move forward. DEP’s Environmental Justice Decision accepted PVSC’s justifications for rejecting the battery alternative at face value and did not even mention PVSC’s two-week duration requirement, or DEP’s prior inquiries into this requirement.

34. After releasing a draft air permit and opening a public comment period – during which ICC again provided written and oral comments opposing the gas plant proposal – DEP eventually finalized the permit on April 2, 2025.



35. Under the final air permit, PVSC was allowed to increase its facility-wide emissions of harmful air pollution like nitrogen oxides, carbon monoxide, sulfur dioxide, volatile organic compounds, particulate matter, acrolein, ethylene dibromide, formaldehyde, ammonia, and other hazardous air pollutants.

36. These increases in pollution are all due exclusively to PVSC's decision to construct and operate a gas-fired power plant instead of a non-polluting alternative like battery storage for its emergency power needs.

37. As ICC and others have raised in comments to PVSC, even these planned emission increases may be an underestimate. PVSC plans to frequently start up and shut down the gas plant (whether for monthly maintenance testing or to start up an additional 10 times per year in advance of incoming storms). But most pollution control equipment is most effective at higher temperatures of steady state operations, and does not work as well (*i.e.*, does not capture as much pollution) during the comparatively lower temperatures of startup and shutdown periods.

38. During the pendency of the AO-25 and permit application process, elected officials, ICC, and other advocates continued to voice their opposition to the gas-fired power plant and its negative impacts during PVSC's monthly public meetings and in letters addressed to PVSC.

39. For example, on July 19, 2024, Newark Mayor Ras Baraka, Senate Majority Leader Teresa Ruiz, Essex County Executive Joseph DiVincenzo Jr., every legislator representing Districts 28 and 29, every Newark Municipal Councilmember, and 49 different organizations, including ICC, submitted a joint letter to PVSC urging the Board of Commissioners to withdraw its application for the gas plant because it would exacerbate environmental injustices in Newark and would add a fourth power plant to the four square miles of the Ironbound, resulting in "a power plant for every square mile of the community." The letter noted that the gas plant was

unnecessary in light of grid hardening investments, and that “[w]e have repeatedly asked PVSC to explore truly clean alternatives for backup power, like solar and battery storage, and revisit the decade old assessment that it used as justification for why clean alternatives would be inefficient.”

40. Later, on September 18, 2024, 76 New Jersey faith leaders submitted a letter to the PVSC Board, again asking the Board to avoid imposing further environmental injustices on the Ironbound community, and highlighting PSE&G’s grid hardening and the availability of renewable alternatives.

41. At the February 13, 2025, PVSC public meeting, the Board requested that PVSC’s technical team update the alternatives analysis that PVSC had previously completed in response to testimony concerning advances in technology and changes in costs of the alternatives, which could make PVSC reconsider its choice to build a new gas plant.

42. In a document titled “Update to SPGF Alternative Analysis” dated April 17, 2025, PVSC summarized the prior steps PVSC had taken to analyze alternatives and reiterated its position that renewable alternatives were not suitable because on-site renewables could not provide the 34 MW of power for two uninterrupted weeks. The document did not otherwise consider advances in renewable energy technology and decreases in their costs.

43. Though this report was dated April 17, 2025, ICC and other advocates were first notified of the existence of the report during PVSC’s May 15, 2025, public meeting.

44. On May 13, 2025, ICC submitted to the PVSC Board an updated expert report of Bill Powers evaluating the viability of renewable alternatives to the gas plant. The report showed that, in the time since ICC had previously commented on the plant, solar and battery storage alternatives had become even more affordable relative to the construction of a gas plant, and

reiterated that the gas plant would be the less reliable alternative since gas supply was subject to disruption during emergencies.

45. On June 11, 2025, ICC submitted to the PVSC Board a report from Bill Powers further supplementing the expert report with an analysis of newly received electricity use data from PVSC. That analysis found that, aside from Hurricane Sandy, over the last 30 years the longest duration that the wastewater treatment plant had lost power from the electrical grid was 11 hours, during the great Northeastern blackout of 2003. The report therefore reaffirmed that, since the cause of the Sandy blackout – substation flooding – has since been resolved, the proper design standard for PVSC’s power needs would be just over 11 hours, which could easily be provided by battery power.

46. PVSC’s June 12, 2025, public meeting included an agenda item to vote to approve Contract B040 for the construction of the gas-fired power plant. During the public comment portion of the meeting before that vote, community members, elected officials, ICC, and other advocates and concerned citizens across the state gave approximately five hours of public comments, the vast majority of which opposed the construction of the plant. Those comments emphasized yet again the viability of renewable alternatives, the incorrect assumptions PVSC used to justify the gas plant, the grid hardening investments that made power loss at the plant very unlikely, and the environmental injustice that the plant would exacerbate.

47. Commenters also questioned why PVSC chose to overbuild the gas plant to be 84 MW when its stated need was only 34 MW, and also questioned whether PVSC intended to seek future approval to use the gas plant to provide electricity to the grid, as PVSC’s prior permit applications had requested.

48. Despite these comments, all but two Commissioners of the PVSC Board voted to award Contract B040 to Skanska/Railroad SPGF JV, finalizing PVSC's decision to move forward with the gas-fired power plant.

49. During the same meeting, the PVSC Board also approved a resolution promising that PVSC "will not seek" to modify the design or regulatory approvals for the gas plant to allow it to export its electricity to the grid. The resolution noted public concern that PVSC would export the gas plant's electricity off-site, as PVSC had initially requested in its January 14, 2021, permit modification application. The resolution did not change PVSC's plans to build an 84 MW gas plant for its stated 34 MW need, nor did the resolution contain any language preventing PVSC from amending or rescinding this promise not to export the gas plant's electricity at a later date.

50. This vote is a final agency action concretizing PVSC's decision to proceed with a gas-fired facility rather than any of the viable alternatives PVSC had continued to explore up to that point.

51. During the public meeting, PVSC indicated that the cost of gas plant construction under contract B040 would total \$232 million dollars. Added to PVSC's prior outlay of \$51.5 million for the three gas turbines, PVSC has so far committed to spend over \$283 million dollars on construction costs alone for the gas plant.

52. By contrast, as described in the expert reports of Bill Powers, the construction and installation costs for battery storage that could meet PVSC's emergency power needs would be approximately \$20 million to \$83 million.

53. Because of PVSC's choice to ignore cheaper, more reliable, and less polluting power options and construct a gas plant instead, PVSC will needlessly increase its emissions into the

Ironbound neighborhood, and the Ironbound – already the neighborhood burdened with the most polluting facilities in the state, by far – will see its fourth gas plant.

**COUNT I**  
**PVSC’S DECISION TO BUILD AND OPERATE THE GAS PLANT**  
**IS ARBITRARY AND CAPRICIOUS**

54. Plaintiff reincorporates all of the preceding paragraphs as if set forth again in full.

55. PVSC failed to engage in reasoned decision-making and made its decision to approve the construction contract based on logical errors. PVSC’s unexplained and unjustified insistence that the SPGF must provide the facility’s maximum power needs for a full two weeks arbitrarily excluded from consideration emergency power alternatives that were cheaper, less polluting, and more reliable.

56. PVSC’s decision-making was predetermined or otherwise pretextual. PVSC’s mind was unalterably closed in favor of constructing a gas plant and ignored factual evidence and logical conclusions that strongly indicated that the gas plant would be detrimental for PVSC’s resiliency and finances, and for the health and wellbeing of residents who live near the wastewater treatment plant.

57. PVSC failed to adequately consider alternatives when choosing to construct a comparatively expensive, polluting, and unreliable gas plant instead of cheaper, cleaner, and more reliable battery storage for its emergency power needs.

58. PVSC failed to respond to comments questioning the logic of PVSC’s requirement that the emergency power source must provide a full two weeks of power at the maximum electric load.

59. PVSC otherwise failed to explain the logic behind its decision that the emergency power source must provide a full two weeks of power at the maximum electric load.

60. PVSC acted in contravention of its enabling statute and its mandate to “provide for the public health and welfare,” N.J.S.A. 58:14-34.13, when it chose to move forward with the gas plant alternative that would increase pollution in the Ironbound and surrounding neighborhoods.

61. PVSC’s decision to build and operate a polluting gas plant in the most overburdened community in the state contravenes the EJ Law, its implementing regulations, and AO-25.

62. PVSC arbitrarily chose to overbuild the power plant, choosing to build a gas plant with a capacity that is nearly 2.5 times larger than PVSC’s purported maximum power demand.

WHEREFORE, Plaintiff asks that the Court:

- A. Find that PVSC’s final agency action moving forward with the construction of a gas-fired power plant was arbitrary, unreasonable, and capricious;
- B. Reverse the approval and void Contract B040;
- C. Remand the matter of the selection of the standby power source to PVSC;
- D. Provide preliminary injunctive relief to prevent PVSC from constructing the gas plant pending the outcome of this litigation; and
- E. Grant such other relief as this Court may deem just.

Dated: July 14, 2025

Respectfully submitted,




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**CERTIFICATION PURSUANT TO RULE 4:5-1**

I certify that I am aware that the City of Newark may be contemplating an action that is based on the same matter in controversy as the above action. To the best of my knowledge, this matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. Plaintiff ICC has also appealed the DEP permit that PVSC applied for and was granted as a result of the PVSC decision-making that is the subject of this action, in the case entitled *In the Matter of Passaic Valley Sewerage Commission, Air Pollution Control Operating Permit Significant Modification, BOP 210002*, Case No. A-002857-24 (N.J. App. Div. 2025).

I further certify that no other parties need be or should be joined as defendants in this action as a matter of law.




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Jonathan J. Smith

Dated: July 14, 2025

**CERTIFICATION PURSUANT TO RULE 4:69-4**

I certify that the transcript of the June 12, 2025, PVSC public meeting where PVSC's Board of Commissioners voted to approve the construction of the gas-fired power plant has been ordered.




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Jonathan J. Smith

Dated: July 14, 2025

