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Contact:
Maya van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network, 215-801-3043

FERC Issues Declaratory Order on PennEast Pipeline
Order Contradicts Third Circuit Decision Protecting Sovereign Immunity of the State of NJ
Allows Eminent Domain To Be Used Against State

Washington, D.C. - The Federal Energy Regulatory Commission (FERC) held a special meeting January 30, with the sole purpose of issuing a Declaratory Order in response to a request of the PennEast Pipeline Company, made on October 4, 2019 following a Third Circuit Court ruling made in September 2019, declaring that the PennEast Pipeline Company could not condemn state owned lands.

The ruling made clear that, because of its sovereign immunity as a state, New Jersey had the right to deny the exercise of eminent domain by the PennEast Pipeline Company over properties in which the state had a property interest.

In response to the Third Circuit's ruling, PennEast filed with FERC urging them to issue a declaratory order that re-interprets the Natural Gas Act (NGA) and draws its own conclusions about states' rights and eminent domain. The PennEast Pipeline Company urged FERC to render a determination on the request on an expedited basis. The PennEast Pipeline Company has asserted its plans to appeal the Third Circuit decision to the United States Supreme Court. Petitions appealing the decision to the Supreme Court are due in the coming week, according to Commissioners, who emphasized the importance of getting their order on the record in advance.

FERC issued the declaratory order at the January 30 special meeting, with Commissioner Richard Glick dissenting.

"It is a blatantly biased effort to subvert the judicial process for the Federal Energy Regulatory Commission to seek to override the ruling of the Third Circuit by determining that the PennEast Pipeline Company can exercise eminent domain authority against the state of New Jersey, ignoring the Sovereign rights of the state. It is the role of the judiciary – not the Commission – to decide sovereign immunity issues," said **Maya van Rossum, the Delaware Riverkeeper and**

leader of the Delaware Riverkeeper Network. "This is another abuse of power by FERC, and an outrageous infringement on state's rights. FERC has demonstrated itself, yet again, to be an ally of the pipeline companies and an enemy of the people. Pipelines are devasting property rights, harming critical natural resources, and magnifying our climate crisis – and FERC is helping them to do it. The right and ability of States to protect their own resources have been increasingly under attack by FERC. This order is yet another example of why we need Congress to step in with legislative reforms that will prevent FERC's ongoing abuses of power. The Delaware Riverkeeper Network will be challenging this decision. This of course means that we will need to file a rehearing request, which we anticipate FERC will respond to with a tolling order intending to rob us of our rights and New Jersey of its rights in order to serve the profit goals of PennEast."

In his dissent, Commissioner Glick stated, "It's irresponsible for this Commission to use our Declaratory Order process to attempt to help a private litigant persuade the Supreme Court to review and strike down an appellate court decision on a constitutional matter. The outcome is both deeply troubling and frankly a discredit to this agency."

You can read DRN's comments on PennEast's request for a Declaratory Order here: https://delawareriverkeeper.org/sites/default/files/DRN%20Comments%20re%20PennEast%20Dec%20Order%20101819%20Final.pdf

The Declaratory Order should be available on FERC's website but as of the issuance of this release was not yet publicly available – information provided is based on a viewing of the FERC 1/30/20 meeting.

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