

August 12, 2022

Steven J. Tambini, Executive Director
Delaware River Basin Commission
25 Cosey Road
PO Box 7360
West Trenton, NJ 08628-0360
Steve.tambini@drbc.gov

VIA ELECTRONIC MAIL

Re: Docket No. D-2017-009-2 for Delaware River Partners LLC, Gibbstown Logistics Center Dock 2, Greenwich Township, Gloucester County, New Jersey

Dear Mr. Tambini,

We, the undersigned organizations representing the Delaware River LNG Coalition, request that the extension granted by the Delaware River Basin Commission (the "Commission") for Docket No. D-2017-009-2 for Delaware River Partners LLC ("DRP"), Gibbstown Logistics Center Dock 2, Greenwich Township, Gloucester County, New Jersey be rescinded and that the request be evaluated through the Commission's public process, which requires an opportunity for public comment and a vote by the Commissioners.

By letter on June 16, 2022, in your capacity as Executive Director of the DRBC, you unilaterally approved Delaware River Partners' request to extend the date of expiration of the above-referenced docket from June 12, 2022, to June 12, 2025 (the "June 16 letter"). This approval was not in accordance with the Commission's Rules of Practice and Procedure ("Rules"), which require that such requests be approved by the members of the Commission. 18 C.F.R. § 401.41. This failure to comply with the Commission's Rules had the effect of shutting the public out of the application process.

Our organizations and thousands of our members have participated in myriad ways and for several years in the review of the Gibbstown Logistics Center Dock 2 project. We are disappointed that you would approve this highly controversial Docket extension out of public view. We request that you rectify this procedural error and refer DRP's request to the Commission to be acted upon at a public hearing where members of the public will have the opportunity to comment before a vote by the Commission is taken. Public participation in a transparent government decision making process is essential, especially since this project will directly affect the communities of the Delaware River Watershed and beyond.

Under the Rules, Commission approvals expire "three years from the date of Commission action unless" the project sponsor "has expended substantial funds (in relation to the cost of the project) in reliance upon such approval." 18 C.F.R. § 401.41. The approval may be extended or renewed **by the Commission** upon application.

Applications may be reviewed by staff, but they are decided upon by the Commission at a public hearing after notice. See 18 C.F.R. §§ 401.121, 401.5. In other words, only the Commission

may extend its approval of Docket No. D-2017-009-2, using the procedure required for Commission decisions on such applications. The Executive Director does not have the authority to act upon an application except in limited emergency circumstances outlined in 18 C.F.R. Section 401.40(b)—which do not exist here.

The Rules clearly specify which decisions may be unilaterally made by the Executive Director and which ones must be made by the Commission. For instance, the Executive Director is empowered to recommend changes to the Commission's Comprehensive Plan. See, e.g., 18 C.F.R. § 401.6 (proposals for changes to the Comprehensive Plan "shall be based upon the recommendation of the Executive Director and the further direction of the Commission"). Hearing requests to the Commission must go through the Executive Director. See 18 C.F.R. § 401.82 ("[T]he Executive Director shall present the request for a hearing to the Commission for its consideration."). The Executive Director may also enter into administrative agreements with state and federal agencies. See 18 C.F.R. § 401.33. However, the Executive Director is not authorized to decide on an application to the Commission unless, as the Rules state, there is "an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property" when "the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part." 18 C.F.R. § 401.40(b). There is no emergency here that justifies your approval of this project in this manner; thus, a decision by the full Commission is required.

Furthermore, there are issues that the public can raise related to the extension approval but are being deprived of doing so. For instance, DRP has not satisfied the requirement to show that it has "expended substantial funds (in relation to the cost of the project) in reliance upon [the Commission's prior approval]." 18 C.F.R. § 401.41. DRP's letter requesting the docket extension primarily cited costs paid to various engineering firms without explanation as to how these costs were necessitated by DRP's reliance on the docket having been approved in 2020. Even assuming that these costs were all compelled by DRP's reliance on the Commission's prior approval, the cited \$1.8 million in costs incurred does not rise to the level of "substantial funds" when viewed in relation to the cost of the project; when DRP first applied to the Commission for approval in 2019, it had already spent \$165 million or nearly one hundred times the amount it now cites on the project per its federal filings.

We request that you rescind your letter dated June 16, 2022, and refer Delaware River Partners' application to the Commission to be acted upon in accordance with 18 C.F.R. § 401.5., that the request be processed through the Commission's public process, requiring an opportunity for public comment and a vote by the Commissioners.

Sincerely,

Berks Gas Truth

Catskill Mountainkeeper

Clean Water Action

Damascus Citizens for Sustainability

Delaware Riverkeeper Network
Don't Gas the Meadowlands Coalition
Environment New Jersey
Food & Water Watch
Natural Resources Defense Council
Protect Northern PA
New Jersey Sierra Club

Cc:

Pennsylvania Governor Tom Wolf, Chair, Delaware River Basin Commission
New Jersey Governor Philip D. Murphy, Vice Chair, Delaware River Basin Commission
Delaware Governor John Carney, Member, Delaware River Basin Commission
New York Governor Kathy Hochul, Member, Delaware River Basin Commission
Colonel John P. Lloyd, Army Corps of Engineers, Member, Delaware River Basin Commission
Pam Bush, Commission Secretary and Assistant General Counsel