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Documents Secured by Delaware Riverkeeper Network From FERC on Gibbstown LNG Proposal Reveal a Failure to Review Facts

Washington, DC: Documents secured by the Delaware Riverkeeper Network from the Federal Energy Regulatory Commission (FERC) as the result of a Freedom of Information Act Request (FOIA) legal challenge show how the agency failed to provide meaningful review of its jurisdictional authority over the proposed Gibbstown LNG Export facility, instead relying only upon industry representations regarding the project, and failed to publicly disclose the information thereby avoiding public scrutiny or challenge of the determination.

Despite FERC staff's refusal to provide non-public documents, in response to the Delaware Riverkeeper Network's May 24, 2019 FOIA request, the materials ultimately received after Delaware Riverkeeper Network's successful FOIA appeal show a 2017 dialogue back and forth with FERC staff, including information about at least one in person meeting, that should have been released. In addition, there were communications with US Coast Guard officials and representatives of the NJ Department of Environmental Protection in the Spring and Fall of 2018. Notably, the communications focused on the extent of FERC jurisdiction regarding the facility, a matter of significant, substantive and legal importance.

According to the documents secured, at a September 7, 2017 meeting, attended by at least eight FERC staffers, representatives for the proposed New Fortress Energy LNG export facility self-described the facility and asserted there was no agency jurisdiction. Those same documents revealed that a senior FERC lawyer agreed that, based on the company's description of the proposed facility, the agency had no jurisdiction. There was no indication that FERC staff had independently verified the details asserted to them regarding the facility nor that they had received any meaningful, detailed, or verifiable documents confirming the characterization presented to them. FERC staffers did recommend that representatives for the LNG facility file for, and secure, a FERC Declaratory Order that the facility was non-jurisdictional. When facility representatives declined to pursue this path there was no follow up efforts made by FERC. Nor was there disclosure to the public of the details of the meeting and/or why FERC was choosing not to exercise jurisdiction.

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FERC's contact with the US Coast Guard and the NJ Department of Environmental Protection that took place in the spring and fall of 2018 similarly relied on information provided by the applicant (e.g. Delaware River Partners', a company involved with the project, Letter of Intent to the Coast Guard for a Water Suitability Assessment) and failed to demonstrate any independent assessment by FERC staff involved. FERC communications reference the potential for an onshore storage buffer tank; however, it is not clear as to whether this is for LNG, or for liquefied hazardous gas (LHG), as Coast Guard communications suggest. A significant concern that FERC did not take into account, as revealed by Coast Guard communications, is the near-incessant truck-by-truck loading of LNG vessels, with each vessel taking up to 15 days to load. The truck-by-truck loading process increases the risk of a LNG release. With no oversight from FERC, the proposed facility is proposed to have near-constant activity and loading operations of both LNG and LHG, near residential neighborhoods.

In addition, there are 18 additional communications that the agency is refusing to disclose, claiming privilege.

"First and foremost, FERC's assertions that there was no meaningful information on file with the agency was clearly false; that is proven by the wealth of documents the Delaware Riverkeeper Network secured because we legally pressed the point. It was outrageous that the Delaware Riverkeeper Network had to go to such great lengths to secure basic information on the proposed New Fortress Energy LNG export facility in Gibbstown. What is equally outrageous is how these documents demonstrate that FERC failed to undertake any meaningful independent review regarding its jurisdictional authority over the project and instead blindly accepted assertions from the applicant that FERC had no regulatory role. Worse yet, none of these discussions or decisions were disclosed to the public in an obvious attempt to help the company evade a legal challenge regarding FERC's jurisdictional authority. Yet again, we have FERC working behind the scenes with the gas industry to help them advance their projects and avoid public opposition. This is an all too familiar, and yet still shocking display of the Federal Energy Regulatory Commission acting as an agency for the gas industry rather than a representative of the people and the rule of law," said ***Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.***

None of this information would have been publicly disclosed had the Delaware Riverkeeper Network not filed an appeal with FERC on July 10, challenging the agency's failure to release documents requested about the Gibbstown LNG Export facility pursuant to FOIA. In response to the challenge, the FERC Office of General Counsel sided with the Delaware Riverkeeper Network in a decision dated August 6 stating: "Because Commission staff did not search the non-public files, I have directed the reprocessing of the request." FERC was given until August 14 to provide a proper response to the Delaware Riverkeeper Network's FOIA request. FERC missed that deadline, unilaterally providing itself more time in contravention of the Office of General Counsel decision. But ultimately, the documents were released after ongoing pressure from Delaware Riverkeeper Network's legal counsel. It is only because of this legal challenge and forced disclosure that the public is now aware of the facts regarding FERC's failure to act.

"The documents Delaware Riverkeeper Network secured from FERC are a window into the behind-closed-doors operating procedures that allow industries and regulators to control highly consequential decisions without public scrutiny nor the public's participation in project deliberations that have enormous potential to impact peoples' lives and our environment. New Fortress Energy got a suspiciously easy green light from FERC, without discussion of details that FERC listed as the subject

of the review meeting held two years ago: the Gibbstown LNG terminal, the transportation of LNG by truck or rail (from Bradford County, PA to Gibbstown, NJ), the processing of LNG at a proposed plant in the shale fields of Pennsylvania, and the loading of LNG onto tankers for export. It's disgraceful that FERC simply didn't do their job and then kept it all secret," said **Tracy Carluccio, Deputy Director of the Delaware Riverkeeper Network**.

A copy of the documents can be found at:

<https://www.delawariverkeeper.org/sites/default/files/FERC%20FOIA%20Response%20Secured%20by%20DRN%20After%20Legal%20Challenge.pdf>

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