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**Statement from the Delaware Riverkeeper
On FERC's Latest Tolling Order Policy**

On May 4, FERC issued Order No. 871-B, revising Order No. 871. Order 871-B addresses eminent domain concerns and places limitations on construction during rehearing proceedings.

"Yet again FERC is operating through a rule change that can just as easily be undone. To the degree that this rule provides some needed protections, there is no reason to believe that a change of administration will not turn around down the line and simply roll them back. And we have little reason to be confident that the actual interpretation and implementation of this rule won't erode over time to the benefit of the pipeline companies versus the people. This may sound cynical but this has been our experience with FERC; at every turn they will apply their rules and the law in a way most beneficial to the industry," **said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.**

"FERC's order does provide some limited and overdue protections to landowners as well as environmental and community organizations threatened by a proposed pipeline project and who are pursuing a rehearing request. It seems to end the practice of allowing construction to advance during the time a rehearing is outstanding. Although, given our experience with FERC and how quickly they pivot to reinterpret their regulations in order to serve the goals and desires of the pipeline companies, we will have to see how this plays out in reality. It is noteworthy that while Neil Chatterjee's original policy modification regarding tolling orders of last year was most focused on providing protections for landowners, this new Order No. 871-B is not limited to landowner rehearing requests; that is a good thing given that many challenges are brought by environmental organizations challenging on both environmental grounds and on issues of importance to landowners. But, it is also noteworthy that FERC continues to obfuscate on whether construction includes tree-felling, this is one of the most quickly inflicted and irreparable harms inflicted in the early days when a challenger is seeking to secure protections and the pipeline companies want to get to work on their project. Tree-felling takes time and inflicts massive harms," **says Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.**

"A big gaping loophole was created in Order No. 871-B by FERC's siding with INGAA to limit application of the protections against construction when the rehearing request is addressing an order amendment regarding

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environmental conditions, construction practices, or modifications to facilities that are part of the project. One of the biggest problems experienced real world is FERC's continuing approval of significant changes to a project after original certification is provided through amendments. They make route changes, often significant ones, allow for significant changes to the construction of facilities associated with the project, and allow for changes in construction practices that can have significant environmental, landowner and community ramifications. Limiting application of the prohibition on construction approval to just an amendment at issue and not the original certification provides a massive loophole. For many the loophole may not be obvious, but for those of us in the trenches challenging FERC fracked gas pipelines it is massive. It is part of the usual practice of FERC and the pipeline companies to dramatically alter pipeline projects through amendments; limiting the proposed protections from this rule to only a proposed amendment at issue means that FERC and the pipeline companies can continue their build as you go practice while at the same time limiting the ability of a challenger to ensure the many changes, and often massive changes, are considered in context -- i.e. as changes to the project as a whole. In fact, this new loophole will incentivize the pipeline companies and FERC to step up this practice of posing a preliminary design for a project simply to get it through the initial Certification process knowing that challenges to the wealth of modifications they anticipate will be easier to get through than actually addressing all of the issues up front in certification. They may even intentionally change some of the most controversial modifications they anticipate until the amendment process because they know doing so will evade meaningful protections and review," **says Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.** "The PennEast pipeline is a good example of the problem. The original underlying certificate was issued in 2018, but in 2019, PennEast requested multiple route realignments in Pennsylvania. Those realignments were authorized by FERC in 2020, while yet another amendment request by PennEast was pending before FERC. The route realignment resulted in significant alterations to the originally approved project. Order 871-B limits any construction protections to just what is included in the amendment, but the truth is that the modifications are an entire overhaul of the project, changing impacted environments, property owners, construction practices, arguments over need and more. Order 871-B doesn't just condone but encourages this kind of plan as you go approach to pipeline design and construction and is simply unacceptable," **added van Rossum.**

This rule comes on the heels of a Congressional Briefing provided by a coalition of over 250 front line organizations dealing with FERC's manipulations of power and law. The VOICES coalition put forth a series of 10 critical reforms to the Natural Gas Act in order to address concerns such as tolling. Congressman Jamie Raskin and Congresswoman Nannette Barragan joined the briefing.

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