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Delaware Riverkeeper Network Files Historic Lawsuit Against FERC

FERC's PennEast Pipeline Review and Approval Process Violating Constitutional Due Process

BRISTOL, PA – The Delaware Riverkeeper Network filed a lawsuit March 2 against the Federal Energy Regulatory Commission (FERC). Filed with the United States District Court for the District of Columbia, the suit holds that FERC's review and approval process for jurisdictional pipeline projects is infected by structural bias, violating Due Process rights in violation of the Fifth Amendment of the U.S. Constitution. DRN seeks changes to FERC's funding structure, as well as other fundamental changes to the agency, to make it accountable and consistent with democratic governance.

FERC is unique among the 26 agencies of the federal government in its financial structure—it recovers the full cost of its operations through charges and fees assessed on the industries it regulates. “Because FERC gets its funding from the big companies it is supposed to be monitoring, it has become, perhaps inevitably, a corrupt, rogue agency,” says Maya van Rossum, the Delaware Riverkeeper, leader of the Delaware Riverkeeper Network. “That’s why FERC has approved 100 percent of pipeline projects—literally every single one of them—that it has considered since 1986.”

The PennEast Pipeline is a 114-mile, 36-inch diameter structure that is proposed to cut through huge swaths of Pennsylvania and New Jersey. As proposed, PennEast will disturb over 2,400 acres of land, convert over 400 acres of forested land to open land, cross 234 waterbodies, and impact over 55 acres of wetlands. The PennEast pipeline would have immense impact on thousands of Americans because of FERC's approval process, which grants the power of eminent domain and bypasses all state and local regulations.

Due process requires that an adjudicative agency be neutral in its decision-making process, the suit argues. Moreover, the Constitution not only mandates that adjudicative proceedings be free of actual bias--the

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Constitution also forbids the mere appearance of bias in adjudications. Since FERC is responsible for approving projects to generate all of its budgetary income, with the natural gas pipeline program being a substantial portion of its overall budget, FERC faces a conflict of interest, resulting in bias toward approving natural gas pipeline projects and impermissibly favoring pipeline company interests.

DRN is seeking a declaration that FERC engages in a biased process, one which deprives DRN and its members of its aesthetic, recreational, liberty, and/or property interests without Due Process and causes irreparable harm. Additionally, the Delaware Riverkeeper Network seeks a declaration that FERC's reimbursement funding structure is unconstitutional; a declaration that FERC's ability to grant the power of eminent domain is unconstitutional; and/or a declaration that FERC's authority to preempt local and state laws with regards to natural gas pipelines is unconstitutional.

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Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the 4 states of the Delaware River Watershed including Pennsylvania, New Jersey, Delaware and New York. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws.