



October 12, 2021

VIA ELECTRONIC MAIL

Suzanne Biggins, Supervising Environmental Specialist
Office of Dredging and Sediment Technology
Division of Land Resource Protection
Department of Environmental Protection
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P.O. Box 420
Trenton, NJ 08625-0420
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**Re: Delaware River Partners, LLC, Joint Application for Multiple Land Use Permits
Activity No. 0807-21-0002.1-LUP-210001**

Dear Ms. Biggins,

Delaware Riverkeeper Network urges the Department of Environmental Protection (“DEP”) to refrain from issuing draft permits for the above-referenced joint application until the question of the Federal Energy Regulatory Commission’s (“FERC’s”) jurisdiction over the Gibbstown Logistics Center is resolved. The application is for the authorization of additional infrastructure to support the liquefied natural gas (“LNG”) transloading operations at the Gibbstown Logistics Center in Greenwich Township, Gloucester County. At the same time, pending before FERC is a petition for declaratory order¹ filed by applicant Delaware River Partners, LLC (“DRP”), seeking a ruling that the Gibbstown Logistics Center is not subject to FERC’s jurisdiction under the federal Natural Gas Act.²

DEP should not issue additional draft permits for this project until FERC has resolved the jurisdictional issue currently before it. To do otherwise would deprive the public of the important oversight provided by FERC in the siting and construction of natural gas

¹ Petition for Declaratory Order Disclaiming Jurisdiction, Doc. Accession No. 20200911-5331, Delaware River Partners LLC, FERC Docket No. CP20-522-000 (Sept. 11, 2020) (Enclosed). Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper intervened in that proceeding and filed a protest in opposition. *See* Protest in Opposition to Petition for Declaratory Order, Doc. Accession No. 20201015-5151, Delaware River Partners LLC, FERC Docket No. CP20-522-000 (Oct. 15, 2020).

² 15 U.S.C. §§ 717-717z.

infrastructure and would further exacerbate the cart-before-the-horse approach that DRP has pursued thus far in developing the Gibbstown Logistics Center.

DEP first issued permits for the construction of the Gibbstown Logistics Center in 2017, authorizing a dock and associated marine terminal.³ Later, in 2019, DEP issued another waterfront development permit for a deep-water port intended to receive and export LNG, among other products.⁴ Now, after substantial construction has been completed on the Gibbstown Logistics Center, and after seeking a ruling from FERC on the extent of its jurisdiction over the facility, DRP yet again requests approval from DEP for additional infrastructure to support its LNG operations. In light of the likely ruling from FERC that DRP erroneously believed the Gibbstown Logistics Center was not governed by the Natural Gas Act, any action from DEP to support additional construction at the site would compound this error.

To illustrate the problem—in 2020, New Fortress Energy LLC⁵ constructed an LNG facility in the Port of San Juan, Puerto Rico. Subsequently, FERC issued an Order to Show Cause why the already-constructed facilities were not subject to § 3 of the Natural Gas Act.⁶ Ultimately, FERC decided that the San Juan facility *was* subject to its jurisdiction, and that New Fortress Energy LLC was required to submit an application for authorization to operate the facility.⁷ Unfortunately, since the facility had already been constructed, FERC was no longer able to evaluate the facility’s siting or construction as required by § 3(e)(1) of the NGA.⁸ Recently, NFEnergía LLC⁹ applied for authorization to operate the San Juan facility, making clear that it did “not propose the construction of any new facilities and is merely requesting authorization to operate” the facility.¹⁰

To avoid a deprivation of FERC oversight required by the Natural Gas Act, DEP must refrain from approving new construction at the Gibbstown Logistics Center until the jurisdictional issue is resolved. Should FERC decide that the Gibbstown Logistics Center merits review under the Natural Gas Act, the siting and construction of the infrastructure proposed in the Joint Application must be reviewed and then approved, modified, or denied in that process, in cooperation with co-regulators such as DEP. Please feel free to contact me or my office with any questions you may have. We look forward to your response.

³ See NJDEP File No. 0807-16-001.2 WFD160001, WFD160002, FHA160001, FHA160002, and CSW160001.

⁴ See NJDEP File No. 0807-16-001.2 WFD19001. This permit is currently the subject of a Petition for Certification filed in the New Jersey Supreme Court by Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper. *See In re: Challenge of Delaware Riverkeeper Network*, Docket No. 86,039.

⁵ Now known as New Fortress Energy, Inc., a corporation majority owned by Fortress Investment Group LLC. Delaware River Partners, LLC is a subsidiary of Fortress Transportation and Infrastructure Investors LLC, which is externally managed by FIG LLC, an affiliate of Fortress Investment Group LLC.

⁶ Order to Show Cause, New Fortress Energy LLC, 171 FERC ¶ 61,230 (June 18, 2020).

⁷ Order on Show Cause, New Fortress Energy LLC, 174 FERC ¶ 61,207 (March 19, 2021)

⁸ 15 U.S.C. § 717b(e)(1)

⁹ A wholly owned, indirect subsidiary of New Fortress Energy, Inc.

¹⁰ Application for Authorization Under Section 3 of the Natural Gas Act at 10, Doc. Accession No. 20210915-5107, NFEnergía LLC, FERC Docket No. CP21-496-000 (Sept. 15, 2021).

Sincerely,

Maya K. van Rossum

A handwritten signature in blue ink that reads "Maya K. van Rossum".

the Delaware Riverkeeper
Delaware Riverkeeper Network

A handwritten signature in blue ink that reads "Kacy C. Manahan".

Kacy C. Manahan, Senior Attorney
Delaware Riverkeeper Network

Enclosure

cc: FERC Docket CP20-522-000 (via *FERC eComment*) (without enclosure)