



July 27, 2022

VIA ELECTRONIC MAIL

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

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,

By letter on June 16, 2022, you approved Delaware River Partners' ("DRP's") request to extend the date of expiration of the above-referenced docket from June 12, 2022, to June 12, 2025. This purported approval was not in accordance with the Delaware River Basin Commission's ("DRBC's") Rules of Practice and Procedure ("RPP") and had the effect of shutting the public out of the application process. On behalf of the Delaware Riverkeeper Network and its members, we request that you rectify this procedural misstep and refer DRP's request to the Commission to be acted upon at a public hearing.

In your June 16, 2022 letter, you stated that you were taking action pursuant to the DRBC's regulations at 18 C.F.R. § 401.41, which states in relevant part:

Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed *by the Commission upon application*.

Id. at § 401.41(a) (emphasis added). The language clearly states that only the Commission has the ability to extend its approval of Docket No. D-2017-009-2, using the same procedure for Commission decision on applications for docket renewal. "Application" is defined in the RPP as "a request for action *by the Commission* in any written form." 18 C.F.R. 401.121.

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Applications are reviewed by staff, and decided upon at a public hearing after notice by the Commission. *See* 18 C.F.R. 401.5. The Executive Director does not have the authority to act upon an application except in limited emergency circumstances—which do not exist here.

Throughout DRBC’s RPP, it is very clear which actions the Executive Director may take, and which actions require action by the Commission. *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”), § 401.82 (“[T]he Executive Director shall present the request for a hearing to the Commission for its consideration.”), § 401.33 (authorizing the Executive Director to enter into administrative agreements with federal and state agencies). In fact, the RPP provides that the Executive Director may only authorize an applicant’s request for action “[i]n the event of 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 that justifies your approval here.

Accordingly, 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., at a public hearing that has been properly noticed.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper



Tracy Carluccio
Deputy Director

Cc: Pam Bush, Commission Secretary and Assistant General Counsel (*via email*)