



**For Immediate Release**  
**August 8, 2019**

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## **Delaware Riverkeeper Network Wins Information Act Appeal Against the Federal Energy Regulatory Commission**

**Washington, DC:** The Federal Energy Regulatory Commission (FERC) Office of General Counsel ruled in favor of an appeal filed by the Delaware Riverkeeper Network challenging the agency's denial of its Freedom of Information Act Request (FOIA) seeking information regarding the proposed Gibbstown LNG Export facility being advanced by New Fortress Energy and Delaware River Partners. The Office of General Counsel decision dated August 6 stated: "Because Commission staff did not search the non-public files, I have directed the reprocessing of the request." FERC has until August 14 to provide a proper response to the Delaware Riverkeeper Network's FOIA request.

"It is 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. FERC is solidly on the side of the natural gas industry and seems willing to misuse its power in any way it can to help the industry advance and to keep the public in the dark so we are unable to fully defend ourselves in the face of these major infrastructure projects. Given FERC's history of evading the public's rights when it comes to natural gas infrastructure, we were not surprised when FERC staff worked so hard to avoid providing us the information we are entitled to under the law, but we certainly were disappointed," said **Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network**. "Given that we know at least one key discussion took place with FERC staff we will be shocked if there is nothing that documents that discussion and any decisions that were made as a result. If FERC does its required review and finds there are in fact no documents, that will demonstrate that FERC is involved in another kind of cover up, one that is designed not to record critical information in order to evade full and fair public scrutiny. The Gibbstown LNG Export proposal is a major threat the Delaware River region and will become another major contributor to the fracking epidemic that is harming so many Pennsylvania communities and advancing the ravages of climate change."

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The Delaware Riverkeeper Network filed its appeal of FERC's failure to release public documents on July 10, asserting that the agency unlawfully failed to provide documents requested pursuant to the Freedom of Information Act (FOIA) regarding the proposed Gibbstown LNG Export facility. The FOIA appeal details the great lengths the Delaware Riverkeeper Network went to in order to secure any documents in the possession of FERC and in the end was simply referred to the agency's website.

As detailed in the Delaware Riverkeeper Network appeal, the organization is aware of at least one communication between FERC and those advancing the Gibbstown LNG Export proposal (New Fortress Energy and/or Delaware River Partners) and therefore believes there should be documentation within the agency subject to FOIA that should have been disclosed.

"The public has a right to know what our government agencies are doing, the information they are processing and how they are making the decisions that impact the environment and the public. Agencies that attempt to hide this from the public eye lose trust and, more importantly, can more easily be influenced by special interests that are more comfortable behind closed doors. Our successful appeal cracks open those doors so we can all have more access and opportunity to affect these consequential decisions," said **Tracy Carluccio, Deputy Director of the Delaware Riverkeeper Network**.

Delaware River Partners (DRP) is the applicant for the Gibbstown Logistics Center Dock 2, a project which would support the export of LNG and natural gas liquids carried out by the company known as New Fortress Energy. Originally billed as a warehouse-type terminal with one dock and one berth, the Center was going to handle automobiles, dry and refrigerated cargo. Bulk liquids such as natural gas liquids (NGL) like propane and butane would be stored on site, utilizing the old cavern built by DuPont for the manufacture of explosives decades ago. NGL was to be exported by ship down the Delaware River to overseas ports. Since 2016, Delaware Riverkeeper Network and other organizations (NJ Sierra Club, Clean Water Action, and Environment New Jersey) opposed the project for environmental reasons and in opposition to the export of fracked natural gas liquids. The Gibbstown Logistics Center Dock 1 project was nonetheless approved. The new proposal by DRP for the additional dock and berths is supposed to reflect New Fortress Energy's revised market plans – to concentrate on Liquefied Natural Gas (LNG) and NGL. LNG would be brought to the site by truck and rail, itself a dangerous aspect of the proposal.

While the project has approval from the DRBC – an approval being challenged by the Delaware Riverkeeper Network in a separate legal filing – it still lacks site plan approval from the township for the new intended design and use, there are multiple outstanding state permits, the US Army Corps of Engineers has yet to provide needed approval, and the Coast Guard has yet to undertake the required Waterway Suitability Assessment.

In addition, the Delaware Riverkeeper Network believes that Federal Energy Regulatory Commission and Department of Energy action is required as well, something Delaware River Partners denies. The documents that the Delaware Riverkeeper Network is seeking from FERC should help to inform the ultimate legal outcome regarding FERC jurisdiction.

A copy of the FERC Office of General Counsel decision is attached.

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FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

**AUG 06 2019**

OFFICE OF THE GENERAL COUNSEL

Re: Freedom of Information Act  
Appeal, FOIA No. FY19-0000

**VIA CERTIFIED MAIL** 7002 0860 0001 4101 5940

Jordan B. Yeager  
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and the Delaware Riverkeeper Network  
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Dear Mr. Yeager:

This letter responds to your correspondence received on July 10, 2019, in which you appealed a denial<sup>1</sup> of your client's request for information filed pursuant to the Freedom of Information Act (FOIA)<sup>2</sup> and the Federal Energy Regulatory Commission's (Commission or FERC) FOIA regulations, 18 C.F.R. § 388.108 (2019). As explained below, your appeal is granted.

**Background**

On May 24, 2019, Maya van Rossum on behalf of the Delaware Riverkeeper and the Delaware Riverkeeper Network submitted a request for the following information:

- (1) Any and all records related to a Liquid Natural Gas (LNG) or Natural Gas Liquids (NGL) Facility whether one was proposed, received permits, and/or applied for permits along the Delaware River and/or in Paulsboro, NJ in the past five years;
- (2) Any records or documents submitted by or that mention the companies Fortress Energy, New Fortress, and/or Gibbstown Logistic Center and are located along the Delaware River and/or Paulsboro, NJ from the past five years; and

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<sup>1</sup> In your appeal, you assert that since FERC did not assign a tracking number to the request or provide a determination letter, FERC's correspondence as described below operated as a denial of your client's FOIA request.

<sup>2</sup> 5 U.S.C. § 552, *as amended* by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016).

(3) Records that include but are not limited to: emails, inquiries, draft applications, memos from meetings with FERC staff about the idea, or any other documents in possession of FERC that relates to the requests above.

Per a telephone call on May 24, 2019, a FOIA Liaison in the Commission's Office of External Affairs (OEA) informed your client that documents responsive to the request may be accessed on FERC's website. The FOIA Liaison followed up with an email summarizing the phone conversation. On June 25, 2019, your client submitted an email request for a letter stating that FERC was either denying the May 24, 2019 FOIA request or otherwise stating that the prior communication was FERC's response. On June 27, 2019, the FOIA Liaison reiterated her May 24, 2019 response and also informed your client that the "New Fortress Energy is a Hybrid LNG project that is not under FERC's jurisdiction." Finally, the FOIA Liaison explained that your client could resubmit a FOIA request if the information available on FERC's website was not responsive.

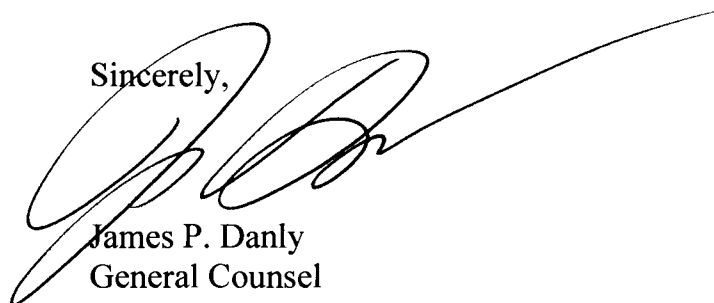
In your appeal, you argue that the Commission failed to respond to the May 24, 2019 request by not conducting an adequate search for responsive records. You assert that your client is aware that New Fortress had at least one meeting with FERC regarding jurisdiction and therefore you state that responsive records should exist. You indicate that through the manner in which the request was processed, "FERC has essentially issued a blanket denial of Ms. van Rossum's right to access to potentially responsive records by simply failing to adequately search for them."

### **Determination**

Because Commission staff did not search the non-public files, I have directed the reprocessing of the request. The request has been assigned tracking number FY19-95, with a due date of August 14, 2019. Accordingly, your appeal is granted.

Judicial review of this decision is available to you in the United States District Court for the judicial district in which you live, or in the United States District Court for the District of Columbia, which would be the location of the data that you seek. You may also seek mediation from the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue litigation. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 301-837-1996; facsimile at 301-837-0348; or toll-free at 1-877-684-6448.

Sincerely,



James P. Danly  
General Counsel