



For Immediate Release

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FERC Faces Multiple Legal Challenges Over PennEast Pipeline Filed by the Delaware Riverkeeper Network

Washington, DC – In a major legal maneuver, the Delaware Riverkeeper Network (DRN) filed a Petition for a Writ of Mandamus against the Federal Energy Regulatory Commission (FERC) in the D.C. Circuit Court of Appeals seeking a court order that FERC issue a final response to the organization's requests for rehearing. A final order on the merits of the rehearing requests is necessary to allow the organization to affirmatively challenge FERC's issuance of a Certificate of Public Convenience and Necessity for the controversial pipeline project. Rather than issue such final determinations, FERC issued "tolling orders", which are decisions that neither grant nor deny the rehearing requests, thereby placing challengers in what the Delaware Riverkeeper Network refers to as legal limbo.

In addition to the Mandamus action, the organization also simultaneously filed a Petition for Review with the D.C. Circuit Court of appeals also challenging the orders of the Commission.

"Unfortunately, from the day the PennEast pipeline project was first announced in 2014, we knew FERC would rubber stamp its approval, it was just a matter of when. We also anticipated that FERC would use its tolling order strategy to try to hamstring our organization, and other challengers to the project, preventing us from getting our day in court until it was too late," said **Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network**. "So, sadly, every step we have taken from the day this project was announced, we have undertaken with an eye for finding a way to get our day in court. Often we find the courts complicit in siding with FERC when it comes to these blatantly unfair strategies. But we are hopeful that we are in a moment in time when the courts finally realize that enough is enough and it is time to place a check on FERC. Now, more than ever in this age of Trump when agencies are being allowed to run roughshod over communities, it is time for the courts to stand up for the rule of law and the rights of the people."

"FERC's continued use, and abuse, of tolling orders to obstruct or otherwise delay aggrieved parties from obtaining their day in court is not only unfair, but reflects a blatant violation of the public's due process rights. We look forward to shining a light on these underhanded tactics before

the D.C. Circuit Court of Appeals.” said **Aaron Stemplewicz, Senior Attorney at Delaware Riverkeeper Network.**

At the same time the Delaware Riverkeeper Network submitted its first rehearing request on January 24, 2018, it also submitted to FERC a Motion for Stay to halt construction and any other land disturbance pending the rehearing request. The motion states, “Unless a stay is issued by the Commission, construction of the Project will go forward without the benefit of the meaningful environmental analysis that the National Environmental Policy Act requires.” FERC has yet to issue a decision with regard to the Motion for Stay as well.

The Delaware Riverkeeper Network also has an ongoing lawsuit first launched March 2, 2016, that is currently before the D.C. Circuit Court of Appeals, asserting that FERC is infected by structural bias and is violating the Delaware Riverkeeper Network’s Fifth Amendment Due Process rights in violation of the Fifth Amendment of the U.S. Constitution. The PennEast pipeline is also the basis of this ongoing legal action.

FERC issued its Certificate approving the PennEast pipeline on January 19, 2018. The Delaware Riverkeeper Network filed its rehearing request to the FERC Certificate on January 24, 2018. FERC responded with a tolling order issued on February 22, 2018. DRN submitted a rehearing request on the tolling order immediately, on February 22, 2018. FERC issued a second tolling order on April 13, 2018. Other organizations have challenged the project and find themselves similarly mired in the legal quagmire created by FERC.

If built, the PennEast pipeline would cut through creeks, wetlands, forests and communities in Luzerne County; Carbon County; Northampton County; and Bucks County, Pennsylvania, and through communities in Mercer and Hunterdon Counties, New Jersey. The 116-mile fracked gas pipeline would include three laterals extending off the mainline, a compression station, and appurtenant above ground facilities.

Pennsylvania has issued Clean Water Act 401 Certification for the project, but not the underlying state permits necessary to support the Certification. The Delaware Riverkeeper Network is actively engaged in a legal challenge against Pennsylvania’s Certification. New Jersey has not taken steps to issue its approval for the project. Approvals are also required from the Delaware River Basin Commission and the US Army Corps of Engineers.

The FERC Certificate was issued with a 4-1 vote. FERC Commissioner Glick, a recent appointee to the Commission, dissented from the decision questioning the asserted need for the project and the information provided by the company regarding its impacts:

“In today’s order, the Commission relies exclusively on the existence of precedent agreements with shippers to conclude that the PennEast Project is needed. Pursuant to these agreements, PennEast’s affiliates hold more than 75 percent of the pipeline’s subscribed capacity. While I agree that precedent and service agreements are one of several measures for assessing the market demand for a pipeline, contracts among affiliates may be less probative of that need because they are not necessarily the result of an arms length negotiation.”

“PennEast’s certificate application lacks evidence that I believe is important to making the public interest determination. The Commission addresses this lack of evidence by conditionally granting the certificate, subject to PennEast’s compliance with the environmental conditions. I recognize that the courts have upheld the Commission’s authority to issue conditional certificates. Nevertheless, doing so comes with significant consequences for landowners whose properties lie in the path of the proposed pipeline.”

Commissioners Chatterjee and Glick both questioned whether it was appropriate to issue the Certificate as a means of allowing the company to gain access to properties for purposes of collecting the remaining data it needs to support permit applications.

A copy of DRN's legal filings can be found at:

http://www.delawariverkeeper.org/sites/default/files/Mandamus%20FERC%20PennEast_FINAL.pdf

[http://www.delawariverkeeper.org/sites/default/files/Petition%20for%20Review%20FERC PE 8 .pdf](http://www.delawariverkeeper.org/sites/default/files/Petition%20for%20Review%20FERC%20PE%208.pdf)

A Dossier of Abuses regarding tolling orders by FERC can be found at:

<http://www.delawariverkeeper.org/ongoing-issues/peoples-dossier-ferc-abuses-stripping-peoples-rights>

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About the Delaware Riverkeeper Network

Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four 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.