

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes acting upon the findings and recommendations of the Hearing Officer in the matter of Docket D-2017-009-2 for the Gibbstown Logistics Center Dock 2 and affirming the Commission's Docket approval.

WHEREAS, on June 12, 2019, following a duly noticed public comment period and public hearing, the Commission (also herein, "DRBC") issued Docket D-2017-009-2 (the "Docket") pursuant to Section 3.8 of the Delaware River Basin Compact ("Compact"), approving a project at the Gibbstown Logistics Center ("GLC") known as the "Dock 2" project; and

WHEREAS, the Delaware Riverkeeper and Delaware Riverkeeper Network (collectively, "DRN") submitted written and oral comment opposing the Dock 2 project during the public comment period, and after the Docket was issued, pursued their objections through a request for administrative hearing under Article 6 of the Commission's Rules of Practice and Procedure ("RPP"), 18 C.F.R. Part 401; and

WHEREAS, in accordance with Section 2.6.3 of the RPP (18 C.F.R. § 401.83), the Commission at its quarterly business meeting on September 11, 2019 granted DRN's hearing request, and with the consent of Pennsylvania, the Commission Chair on November 1, 2019 designated John D. Kelly, Esquire, then serving as a hearing officer with the Pennsylvania Department of State, as the Commission's Hearing Officer for purposes of this administrative appeal; and

WHEREAS, in accordance with Section 2.6.4 of the RPP (18 C.F.R. § 401.84), after pre-hearing proceedings were completed, over an eight-day period from May 11 through May 15, 2020 and May 18 through May 20, 2020 the Hearing Officer afforded DRN and Docket holder Delaware River Partners LLC ("DRP") (collectively, the "interested parties") the opportunity to introduce evidence, whether or not previously offered to the Commission, and to cross-examine witnesses; the Commission Secretary, Pamela M. Bush, Esquire, also participated in the hearing as counsel for the DRBC staff; and

WHEREAS, in accordance with Section 2.6.5 of the RPP (18 C.F.R. § 401.85), the Hearing Officer heard testimony from thirteen expert witnesses and three fact witnesses, including witnesses from DRN and DRP and the Commission's project review manager; ; and

WHEREAS, other persons submitted written statements as permitted by Section 2.6.4 of the RPP (18 C.F.R. § 401.84), and neither interested party requested the opportunity to cross-examine the authors of these statements; and

WHEREAS, due to the onset of the Covid-19 pandemic in March of 2019, the Hearing Officer conducted the hearing via video conference; a video recording was made of each day's proceedings, and all recordings were posted to the Commission's website, drbc.gov, within 48 hours of the close of the day's proceedings; and

WHEREAS, transcripts of the hearing were also created and furnished to the interested parties, the Hearing Officer and the Commission; and

WHEREAS, following post-hearing briefing, in accordance with Section 2.6.8 of the RPP (18 C.F.R. § 401.88), the Hearing Officer on July 21, 2020 issued his Report of Findings and Recommendations (“Report”), containing 385 Proposed Findings (“Findings”), a Discussion, and a Conclusion and Recommendation; and

WHEREAS, the Hearing Officer recommended that “the Dock 2 Docket should remain as previously approved by the Commission” (Report, p. 101); and

WHEREAS, in accordance with Section 2.6.8 of the RPP (18 C.F.R. § 401.88), on August 10, 2020, DRN served objections to the Report, and DRP served objections limited to certain proposed Findings in the Report, and on August 21, 2020, the Commission’s Executive Director, Steve Tambini, acting through Ms. Bush, served staff comments on the Report to which the interested parties responded on August 31, 2020; and

WHEREAS, upon the response of the interested parties to staff’s comments on the Report, the administrative appeal became ripe for decision by the DRBC Commissioners (*see* RPP § 2.6.9 (18 C.F.R. § 401.89)); and

WHEREAS, upon receipt of the Report, the briefs and objections of the interested parties, and the comments of the Commission staff, and with the assistance of the Commission’s General Counsel, the Commissioners each have carefully reviewed the Hearing Officer’s findings and recommendations and the administrative record; and

WHEREAS, based on their review, the Commissioners have concluded that the Dock 2 project as conditioned by the Docket would not substantially impair or conflict with the Commission’s Comprehensive Plan for the immediate and long range development and uses of the water resources of the basin (*see* Compact, §§ 3.8, 3.2(a), and 13.1); now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Commission adopts the findings of the Hearing Officer except as specified in the Opinion attached hereto and incorporated herein, and for the reasons stated in the Opinion the Commission adopts as its final determination the recommendation of the Hearing Officer to affirm the June 12, 2019 Docket approval.

2. The Commission hereby finds and determines that DRN has failed to meet its burden of demonstrating either that the Dock 2 project as conditioned in the Docket would substantially impair or conflict with the Comprehensive Plan or that the administrative record for the Docket contains insufficient information to support the Docket approval.

3. This Resolution constitutes the Commission's final determination in this matter pursuant to Section 2.6.9 of the RPP (18 C.F.R. § 401.89).

BY THE COMMISSION

ADOPTED: December 9, 2020