

## RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes regarding the request by Delaware River Partners LLC for an extension of Docket D-2017-009-2 for the Gibbstown Logistics Center Dock 2.

WHEREAS, on June 12, 2019, the Delaware River Basin Commission (the “Commission” or “DRBC”) issued Docket D-2017-009-2 (the “Docket”) to Delaware River Partners LLC (“DRP”) approving a dredging and deep-water berth construction project known as the Gibbstown Logistics Center Dock 2 (“GLC Dock 2” or “Project”), to be constructed at the applicant’s multi-use marine terminal and logistics center, located on a portion of the former DuPont Repauno Works site in Greenwich Township, Gloucester County, New Jersey; and

WHEREAS, GLC Dock 2 is to consist of a wharf featuring two deep-water berths “for the loading of bulk liquid products directly from railcar or truck onto ocean-going vessels for export and includes infrastructure for transloading operations,” to support the transloading of a variety of bulk liquid products, including butane, isobutane, propane (collectively, liquified petroleum gas, or “LPG”), liquefied natural gas (“LNG”), and ethane (Docket sec. A.4 –Project Description); and

WHEREAS, the Docket specifically provides that there may be “no manufacturing of any bulk liquid products at the site,” and “no bulk storage of LNG at the site,” (*id.*); and

WHEREAS, following a full evidentiary hearing granted to resolve an administrative appeal of the Docket, on December 9, 2020, the Commission entered its final decision affirming the Docket; and

WHEREAS, in January 2021, the Delaware Riverkeeper Network (“DRN”) appealed the Commission’s decision to the United States District Court for the District of New Jersey (the “District Court”), *DRN v. DRBC and DRP*, Civ. A. No. 21-1108 (D.N.J.); and

WHEREAS, with the District Court appeal still pending, on June 2, 2022, DRP requested a three year extension of the Docket in accordance with Section 401.41(a) of the *Rules of Practice and Procedure* (“RPP”) then in effect, which in relevant part provided that “[a]pproval by the commission under these regulations 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,” 18 C.F.R. § 401.41(a) (“unamended Section 401.41(a)”);

WHEREAS, following an opportunity for written comment by the Delaware Riverkeeper Network and an opportunity for DRP to respond, on September 8, 2022, the Commission approved DRP’s request for a three-year extension of the Docket, through June 12, 2025 on two distinct grounds: (1) that DRP demonstrated it had expended substantial

funds in relation to the cost of the project within the three years following the Commission's approval, and that it was thus entitled to the requested extension under Section 401.41(a) of the RPP; and (2) that the pending appeals of federal and state approvals of the GLC Dock 2 project provided an independent ground for the Commission to extend the three-year expiration period in Section 401.41(a) or to waive the expiration period in accordance with Section 401.123 of the RPP; and

WHEREAS, in an opinion and order dated March 31, 2023, the District Court affirmed the Commission's Docket approval and directed the Clerk of Court to close the case, see *DRN v. DRBC and DRP*, Docket Nos. 61 & 62; and

WHEREAS, by Resolution No. 2024-06 on June 5, 2024, the Commission amended RPP Section 401.41(a), effective July 22, 2024 (hereinafter, "Section 401.41(a)"), altering the conditions under which a docket may be extended; and

WHEREAS, Section 401.41(a)(1) provides for a docket extension of up to five years, based upon a written request from the project sponsor accompanied by supporting documentation demonstrating that:

- (i) no material changes to the project as approved are proposed;
- (ii) the condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission's Comprehensive Plan;
- (iii) the Commission's Comprehensive Plan has not changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan; and
- (iv) the project sponsor is diligently pursuing the project as shown by its planning, construction or project operational activities, its project expenditures, its efforts to secure government approvals necessary for the project, or its active participation in appeals of government decisions on its applications for government approvals. The project sponsor is not required by this subsection to conduct activities that it is not legally authorized to conduct or that it demonstrates would be unreasonable for it to conduct before obtaining all necessary final government approvals;

18 C.F.R. § 401.41(a); and

WHEREAS, by letter dated March 14, 2025, DRP submitted a request for a three-year extension of the Docket in accordance with Section 401.4(a)(1), offering evidence to demonstrate that: (i) DRP intended to construct GLC Dock as approved with no substantial material changes; (ii) the condition of the Project had not changed in a manner that would impact its conformance with the Commission's Comprehensive Plan; (iii) the Project had not changed from the original approval and, as such, remained in conformance with the Commission's Comprehensive Plan; and (iv) although construction of the Project was delayed, DRP was diligently pursuing the project by, in relevant part, working to secure and extend all requisite government permits and approvals; and

WHEREAS, in accordance with RPP Section 401.41(a)(4), on April 15, 2025, the Commission published notice of DRP's request to extend the Docket and announced that written comment on the request would be accepted through 5:00 pm on April 24, 2025; and

WHEREAS, the Commission received 862 comments prior to the close of the comment period and an additional 51 comments shortly thereafter from individual commenters and the following organizations: DRN, Schuylkill Pipeline Awareness, Damascus Citizens for Sustainability, Berks Gas Truth, Food & Water Watch, Environment New Jersey, Pathways Institute of Metaphysics, and Surfrider Foundation; and

WHEREAS the public comments, all of which objected to the requested extension, alleged specifically that: (1) the Project had changed materially since the Docket was approved, based on the proposed construction of two underground storage caverns on the upland portion of the GLC and because of the potential transport of LNG by truck to and from the GLC site; and (2) DRP had not diligently pursued construction of the Dock 2 Project; and

WHEREAS, the comments also included objections raised during the Commission's initial review of the Project, including concerns over:

- health and safety related to the transport of LNG and storage of petroleum products;
- air quality and climate change related to fossil fuels;
- water quality resulting from dredging activities;
- harm to aquatic life;
- economic impact to communities in the Delaware River Basin;
- environmental justice; and
- other general political concerns; and

WHEREAS, in accordance with Section 401.41(a)(4), the Commission furnished DRP with the public comments and afforded DRP an opportunity to respond; and

WHEREAS, by letter dated May 16, 2025, DRP replied, asserting that there had been no material change to the Project within the meaning of Section 401.41(a)(1)(i)-(iii), and specifically that:

- the proposed underground storage caverns are unrelated to the Docket, which approved only the dredging and construction activities necessary to construct Dock 2;
- the proposed storage caverns are to be located in an upland portion of the GLC—an area not related to the “Project Area” defined in the Docket;
- the cargo that could potentially be handled by GLC Dock 2 when operational is independent from the Docket and not relevant to DRP’s extension request; and

WHEREAS, DRP further attested that it has diligently pursued the Project within the meaning of Section 401.41(a)(1)(iv) by securing necessary government approvals and actively participating in appeals of government decisions, including as a defendant-intervenor in the appeal of the permit issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (the “Army Corps Permit”), *Delaware Riverkeeper Network v. U.S. Army Corps of Engineers*, No. 1:20-cv-4824 (D.N.J.), a matter that is currently administratively terminated pending a decision by the Federal Energy Regulatory Commission (“FERC”); and

WHEREAS, DRP also averred that it has made substantial expenditures in support of the Project, including incurring \$8 million in costs; and

WHEREAS, DRP contends that the objections relating to health and safety, air quality and climate change, water quality, aquatic life, economic impact, environmental justice, and political concerns were thoroughly considered during the DRBC public process, administrative hearing, and litigation related to the Commission’s initial approval of the Docket; and

WHEREAS, the DRBC staff, in consultation with the Commissioners and staff of their respective agencies, carefully reviewed DRP’s extension request and supporting materials as well as the entirety of the public comments, and developed a Comment and Response Document setting forth the Commission’s response to the comments submitted by the public and DRP; and

WHEREAS, construction of the GLC Dock 2 project cannot commence until litigation over the Army Corps Permit issued to DRP is resolved, *Delaware Riverkeeper Network v. U.S. Army Corps of Engineers*, No. 1:20-cv-4824 (D.N.J.);

NOW THEREFORE, BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Commission incorporates the WHEREAS Clauses above as though fully set forth herein.
2. The September 2025 Comment and Response Document is hereby adopted in its entirety.
3. After thorough consideration of the public comments and the materials submitted by DRP, the Commission hereby finds that:
  - a. There have been no material changes to the Docket as approved by the Commission. In particular, the Commission finds that:
    - i. The proposed construction of two storage caverns upland of the GLC Dock 2 project are unrelated to the dredging and construction activities approved by the Docket, which are located almost entirely on submerged lands of the Delaware River; and
    - ii. The transport of LNG or other bulk gases by truck is separate from the activities authorized by the Docket. Regardless, given that the “Project Description” in the Docket expressly contemplates the transport of LNG by truck, this aspect of DRP’s proposed activities does not constitute a change.
  - b. The condition of the Project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission’s Comprehensive Plan;
  - c. The Commission’s Comprehensive Plan has not changed in a manner important to determining whether the Project would substantially impair or conflict with the Comprehensive Plan; and
  - d. DRP has diligently pursued the Project within the meaning of Section 401.41(a). In particular, on the basis of averments and documentation provided by DRP, the Commission finds that:
    - i. DRP has attempted to secure all relevant permits and government approvals required for the Project.
    - ii. DRP is actively participating in litigation related to the Army Corps Permit, a matter that is currently administratively terminated pending a decision by FERC.

- e. DRP has satisfied the conditions of Section 401.41(a), and the Commission accordingly exercises its discretion to extend the Docket for an additional five years, through June 12, 2030.
  - f. If the Project as approved by the Commission changes materially from that described in the Docket, amendment of the Docket may be required.
4. DRP is hereby directed to inform the Commission promptly of any change to the Project as approved by the Docket, arising from the pending appeal of the DRP's Army Corps Permit or for any other reason, if the change could affect the Commission's determination that the Project does not substantially impair or conflict with the Commission's Comprehensive Plan.

BY THE COMMISSION

ADOPTED: September 10, 2025