



UNOFFICIAL TRANSCRIPT

GENERAL COUNSEL REPORT AND VOTE ON GIBBSTOWN ADMINISTRATIVE APPEAL
September 10, 2020

Kenneth Warren, Esq., DRBC General Counsel: One of the matters pending before the Commission involves the administrative appeal of Docket D-2017-009-2 for the Dock 2 project at the Gibbstown Logistic Center. The GLC is a multi-use, deep-water seaport and industrial logistics center located on a portion of the former 1630-acre DuPont Repauno facility. This project involves dredging of Delaware River sediments and the construction of a wharf to be located approximately 650 feet from the shoreline. The wharf will include two deep-water berths in the Delaware River to accommodate the export of bulk liquid products by vessel. The GLC was also the subject of a docket for the Dock 1 project approved by the Commission on December 13, 2017.

On March 25, 2019, DRBC published notice it received an application for the Dock 2 project. DRBC published a draft docket on May 24, 2019 and accepted public comments over a 14-day period. DRBC also conducted a public hearing. At its meeting on June 12, 2019, the Commission approved the Docket under Section 3.8 of the Compact.

Following the Commission's docket approval for Dock 2 at the GLC, the Delaware Riverkeeper Network and the Delaware Riverkeeper requested an administrative hearing in accordance with Article 6 of the Commission's Rules of Practice and Procedure. On September 11, 2019, the Commission granted DRN's hearing request and thereafter designated John D. Kelly, Esquire, then serving as a hearing officer with the PA Department of State, as the Commission's Hearing Officer for purposes of the administrative appeal.

In accordance with the process set forth in the RPP, the Hearing Officer held an evidentiary hearing during which the interested parties were permitted to introduce evidence whether or not previously presented to the Commission, and to present and cross-examine witnesses.

The Hearing took place over eight days in May during the coronavirus pandemic. Thirteen experts testified, as well as three fact witnesses. Numerous exhibits were introduced into evidence. The public was afforded a 55-day period immediately preceding the hearing to submit written statements. Many persons did so as permitted by the hearing process. The Hearing Officer, parties, attorneys and witnesses are to be commended for conducting the

hearing virtually in an expeditious and professional manner. Based on the hearing record, on July 21, 2020, the Hearing Officer issued a 101-page report which included, among other things, 385 separate findings of fact, a discussion, and a recommendation that the Dock 2 docket be affirmed.

On August 10, 2020, DRN filed objections to the Hearing Officer's Report and a supporting brief. On August 21, 2020, in accordance with the process in the RPP, DRBC staff filed comments in support of the Hearing Officer's recommendation. On August 31, 2020, DRN filed a response to the DRBC staff comments. DRP, which was the applicant, also filed comments on August 10 and August 31. The Commission's task is to review the Report and hearing record and make a final determination.

As is apparent from this description, the evidentiary record and the legal arguments of the interested parties are extensive. In accordance with the RPP, the Commission Chair asked me to assist in the review of the full administrative record and to prepare documentation of the Commissioners' decision on the administrative appeal. Given the size of the record, the technical nature of much of the extensive evidence, and the submission of briefs as recently as last week, completing a careful and thorough review by all of the Commissioners by this meeting has not been possible, and additional time for review and deliberation is required.

Among the evidence in the hearing record is the Section 404/10 permit issued by the U.S. Army Corps of Engineers for the Dock 2 project. Pursuant to this permit, DRP is prohibited from conducting in-water work during the period from March 15 through September 15. Given its existing government approvals, DRP could commence construction any time after September 15. The Commissioners may wish to preserve the status quo by staying the Docket approval until the Commission issues a final determination resolving the administrative appeal. This would not be intended to signal how the appeal will be resolved once your review is complete. If you would like to issue a stay, it can be done by proposing and adopting a motion.

This completes my General Counsel report.

[The motion offered by New York and seconded by New Jersey follows:]

Kenneth Kosinski: I move that in order to protect the water resources of the Basin pending a Commission determination resolving the administrative appeal of Docket D-2017-009-2, the Commission's approval of Docket D-2017-009-2 for the Dock 2 project at the Gibbstown Logistic Center is stayed effective upon adoption of this motion and terminating at such time as the Commission makes a final determination resolving the administrative appeal.

[New York, New Jersey and Delaware voted in favor. The United States voted *not* in favor. Pennsylvania abstained.]