

David Guion

I am writing as a concerned local resident to express my strong objection to DRBC's proposed changes to their Rules of Practice and Procedure. Citizens have long protested the type of clandestine decision-making described in the proposed procedural changes. To give a recent example, last year the DRBC Executive Director unilaterally extended approval for the Gibbstown LNG Export Terminal Project without public input, and without a vote by the DRBC Commissioners. Only when Delaware Riverkeeper Network discovered the approval through a FOIA request was the decision to extend the permit discussed at a public meeting and voted on. This kind of back room action should be prohibited, not codified into DRBC rules. Citizens demand the opportunity for meaningful, informed public participation in DRBC approvals and policies. DRBC decisions directly affect the quality of our drinking water and our air, as well as the diversity and health of the Delaware River and its tributaries, species, habitats, and ecosystems. Communities throughout the entire Delaware River Watershed are affected, and we cannot achieve good outcomes if DRBC decision-making is not open and interactive. The DRBC must disclose its decisions and the information underlying them, and allow for review and comment. DRBC Commissioners must be actively involved in these decisions -- as our elected representatives, they are accessible and accountable to members of the public, and are required to respect our rights and protect the environment for the public good. However, increased transparency and participation are not the intent of the rule-making proposal. In fact, in almost all cases the intent is the opposite. Here are six key problems with proposed amendments by the DRBC: 1. Administrative Staff decision-making cuts out the public. The Executive Director is given authority to make crucial decisions behind closed doors, without public knowledge and without a vote by the DRBC Commissioners. These include: the power to decide whether a change to a project is "material" (if "material," it would be opened up for more robust review); the power to decide what is required in a project application and when an application is complete; and the power to unilaterally extend some permits for as many as 5 additional years. 2. Key permits are given a pass. Permits without an expiration date (like the Gibbstown LNG Export terminal project) are given favored status. The Executive Director would be given exclusive authority to extend such permits, removing public input and relieving the Commissioners of their responsibility to review and approve extensions. This legitimizes the aforementioned behind-the-scenes decision-making that undermines government accountability and public trust. 3. A low bar is set for the extension of Existing Projects that haven't been built. \$1M is set as a "minimum" expenditure to declare that a project has sufficient investment, and even that value can be disregarded under certain circumstances. No foundation is provided for this dollar amount and there are no meaningful criteria for determining what are "substantial funds in relation to a project." The Executive Director alone has the power to decide if funds are substantial. 4. The proposal improperly connects litigation to the extension process. Sponsors of a project can claim that litigation by opposing parties justifies not building or spending sufficient funds on a project that they want extended. This also intimidates the public from litigating when litigation is called for. 5. The terms "Material Change"/"Materially" are used throughout the proposed rule-making. Materiality is not defined. The use of subjective criteria clouds the decision-making process, prevents public understanding, and allows for different interpretations for different projects. We demand that clearly defined standards apply to decisions with which the public must live every day. 6. Citizens will lose access to information. DRBC is removing all references to the federal Freedom of Information Act from its rules. The FOIA request process would be replaced by a DRBC-centric system that leaves many aspects of making a request

unaddressed, including forms, reason for denial, and how costs will be assessed -- including whether waiver of fees can be requested, as it can be in the FOIA system. The DRBC must provide a public access system that is clear, user-friendly, and affordable, to assure public access to public records. It is also proposed that the Executive Director will unilaterally determine whether a disclosure of information is in the public interest. This decision does not and should not rest with the Executive Director. I appreciate being given the time and space to voice my opposition to the proposed amendment to rules and practices. Sincerely, David Guion