November 29, 2020

To Whom It May Concern:

I am writing on behalf of the Towboat and Harbor Carriers Association to strongly request that the Champlain Hudson Power Express (CHPE) cable route application as proposed in the Hudson River be denied.

“the Applicants recognize that there is significant waterborne commerce on the Hudson River, with the majority of the cargo originating from the Ports of New York and New Jersey.”

The Maritime Industry strongly feels that vessel safety has been dismissed in this process and that safe navigation will be compromised in the Hudson River by this or any cable seeking to run parallel in navigable waters. The first and hopefully last cable to run parallel – A vast and powerful river, the Hudson has long been a vital piece in our nations Maritime Transportation System (MTS) serving New York State and our Nation connecting cities/ports world-wide with numerous ports along the Hudson including the State Capital Port Albany.

“The Port Industry of New York and New Jersey accounted for nearly $12 billion in tax revenue, supported over 500,000 jobs, and was responsible for $36.1 billion in personal and $99.5 billion in business income in the region in 2019, according to a new economic impact study released today by the New York Shipping Association”.

“In addition to the indisputable statistics through 2019, the pandemic has highlighted for the nation what we have always known - our supply chain is the lifeline of the economy and we must keep it working efficiently,”

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1 HDR Letter October 18, 2010, Sean Murphy
2 New York Shipping Association, 2020 Economic Report
3 IBID

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STATE POLICY 3

“The installation and operation of the transmission cables may affect navigation or future dredging activities which may, in turn, affect the operation of port facilities in New York City and Albany. However, the applicant has consulted with appropriate port facility operators and agreed to site the project in a manner that would not hamper or interfere with port activities.”

The mission of Harbor Safety, Navigation and Operations Committee of the Port of New York and New Jersey is: “To develop non-regulatory solutions to operational challenges in the Port of New York and New Jersey.” The Energy Sub-Committee has worked closely with numerous Alternative/Conventional Energy proposals to develop workable sensible proposals and met with the CHPE consultants’ numerous times to discuss cable routing. At each meeting the Energy Sub-Committee raised several concerns regarding the proposed cable route and installation. At first the consultant informed the Energy Sub-Committee that they were negotiating with the New York State Department of Conservation (DEC) to route the cable outside the channel in shallow water and that the route would not be the same as presented however, the CHPE route is very similar though not identical to the first proposal but still does not meet navigation safety concerns and therefore the Applicant has met but NOT consulted with the appropriate port facility operators.

STATE POLICY 2

“Should the bi-pole occupy any federally maintained navigation channels it will be buried at least 15 feet below the authorized depth in a single trench within those channels. In this matter, the siting of the cable at these depths will minimize conflicts with water based navigation by substantially avoiding anchor strikes and potential future navigational improvements.”

All waters are navigable whether maintained or not and therefore the cable must be buried at least 15-feet when sited in navigable waters. Varying in size and use, anchors have long been a staple of the shipping industry performing many functions including anchoring, docking, and emergencies. While docks and anchorages are predictable,

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4 NYSDOS Letter June 8, 2011, Signed by Daniel E. Shapiro, First Deputy Secretary of State
5 IBID

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emergencies are not. The Hudson River varies in channel width and depths is primarily rock and can narrow to 400 feet in width. The primary tool to mitigate non-controllable factors is the anchor. Non-controllable external factors include diminishing visibility (fog, snow, and thunderstorms), ice, or other vessels or internal casualty factors (loss of engines or steering). As non-controllable factors can occur anytime and anywhere in any navigable waters where anchors are the primary tool for crew and cargo safety.6

Risk of fouling an anchor on a cable has many impacts to include but not limited to loss of assets, supply chain schedules, asset/human casualties, and/or environmental damage. Vessels transiting the River trade in various liquid products including Albany exports of ethanol.

The Energy Sub Committee and the Towboat and Harbor Carriers Association have serious concerns with the proposed cable routing and burial depths for this project and strongly object to burial depths as proposed. Burial depths should be analyzed, verified, and certified by the applicant and MUST be for ALL navigational waters maintained or not maintained. Two experts Malcom Sharples P.E., Offshore Electrical Cable Burial for Wind Farms: State of the Art, Standards and Guidance & Acceptable Burial Depths, Separation Distances and Sand Wave Effect and Dr. Charles Aubeny testimony in Trans Bay Cable LLC vs. M/V Ocean Life calculate anchor penetration significantly deeper than the deepest burial depth proposed for the CHPE. The anchor is an important ship-handling tool and often the only tool available in an emergency. Commercial vessels often times have to anchor unexpectedly in an emergency situation due to diminishing weather and visibility, to avoid collision or running aground. Mariners also rely on the anchor for ship-handling maneuvers such as turning a vessel with the following tide or to keep the vessel under control when approaching a berth or anchorage. The anchor is very effective but not a precision instrument. Routing underwater infrastructure (cable, pipelines, etc.) parallel to the navigable waters is very likely to complicate anchoring restricting vessel safety for crew and cargo. An effort to avoid the cable or the anchor snagging the cable could result in a serious marine incident at a significant environmental and economic cost.7

Navigation Safety must be preserved in all navigable waters of the Hudson River as stated by the CAPT Black, United States Coast Guard, Chief of Prevention by direction of the District Commander in a letter dated July 19, 2017 to Stephen Ryba, Chief Regulatory Branch, U.S. Army Corps of Engineers. During Superstorm Sandy, over 60


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commercial U.S Flagged vessels sheltered at anchored in the Hudson River until storm waters receded and terminals opened. Protected United States mariners and vital cargoes will be at risk without the ability to anchor.

The OSPARS Commission cable routing recommendations includes as follows:  

- protected areas, environmentally sensitive and/or valuable areas with e.g., habitats and species sensitive to physical disturbance or damage where the cable laying activity or operation would result in adverse effects should be avoided;
  - Running the cable parallel to navigable waters make it impossible to avoid adverse effects to navigation safety and marine environment

- **shortest possible length;**
  - The CHPE proposal is the Longest proposed length

- bundling with existing cables and pipelines, where it is safe to do so;
  - No other cable or pipeline runs parallel to navigable waters. One cable running parallel is unfit for rendering this proposal for perpendicular crossings.

- **minimal number of crossings** with other cables or pipelines to reduce the number of crossing structures.
  - The CHPE cable intends to cross numerous cables and pipelines

“Another condition requires that the applicant verify the transmission cables' burial depth on a periodic basis so that they do not become a hazard to navigation or marine resources.” OSPAR Commission Environmental Impacts are listed as follows:  

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8 Guidelines on Best Environmental Practice (BEP) in Cable Laying and Operation

9 IBID

10 Guidelines on Best Environmental Practice (BEP) in Cable Laying and Operation

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- **Contamination Impacts** – “Release of harmful substances or nutrients may take place while the cable is laid due to displacement and resuspension of contaminated sediment (see disturbance) or because of damage to cables with subsequent release of insulation fluids. Contamination may also occur due to accidents and technical faults during construction”. TDI funded report details projected impacts “CHPE Navigation Risk Assessment”

- “Contamination Impacts” will occur during sheer and jet plow applications and again each and every time the cable is found to not be buried and/or shifted and required to be relocated. It should also be noted that the cable is slated to be abandoned on our nation’s waterway during the end of its life cycle. Duty to Give Adequate Notice of the Obstruction
In addition to installing a submerged structure in accordance with the permit issued by the Army Corps of Engineers, the owner of the submerged structure must properly mark it. A party owning and maintaining a submerged structure above the mud line has a duty to warn of the potential obstruction to navigation. Notice of the submerged structure must be adequate to apprise mariners of its location and characteristics. The signage must be visible from passing vessels and located close to the obstruction. Duty to Inspect the Obstruction: Once a submerged obstruction is installed, the party owning it has a duty to adequately inspect it and correct all failures.

- **Dielectric fluid Impacts** - Pressure blow of dielectric fluid leak in the Hudson River cost $10 million to clean up plus civil penalties. A similar blow in Long Island Sound cost $30 million in a matter of first impression, the U.S. Court of Appeals for the Second Circuit has ruled that an oil-filled submerged electrical transmission cable is a "facility" under the Oil Pollution Act of 1990 (OPA). *Power Authority of the State of New York v. M/V Ellen S. Bouchard, et. al.*, No. 19-1140-cv, 2020 WL 4355268 (2d Cir. July 30, 2020). The Second Circuit's decision turned on interpreting the OPA definition of "facility," and marked the first time this statutory term has been construed by an appellate court. The court held unanimously that the cable in question is an OPA "facility," and thus falls within the purview of the OPA liability scheme.

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• “Electro-magnetic impacts” – “Magnetic fields generated by cables may impair the orientation of fish and marine mammals and affect migratory behavior”. A TDI funded report details projected impacts at various burial depths.

• “Electro-magnetic impacts” - In a report written for HDR/DTA (Consultants for TDI dated March 3, 2011) to calculate DC magnetic fields all studies were done at either 6 or 8 foot burial depths. It is understood that TDI plans to not bury the cable in significant portions of the Hudson River, therefore this report is inconclusive to the impacts to marine resources. What is known is that even at 6 or 8 foot proposed burial depths magnetic compasses for vessel navigation will be compromised. The Magnetic Compass is the cornerstone of all Navigation and required by law to be carried aboard vessel. Unknown/sporadic deviation of the Magnetic Compass by magnetic fields emitted by cables would severely impact navigation safety in the event of Electronic Navigation Failure caused internally or externally (Lightning Strike, Cyber Attack). Erroneous deviation of the magnetic compass due to the impact of cabling lying parallel to the navigable channel may exacerbate the situation of trying to navigate in reduced visibility, thus adding an unnecessary level of additional risk to the mariner.

• “Reef Effect Impacts” – “The submarine cables themselves, if not buried, will also provide a solid substrate for a variety of species. This ‘reef effect’ has been extensively discussed in literature (see OSPAR 2009) and may lead to the introduction of non-local fauna and thus to an alteration of the natural benthic community.”

• “Reef Effect Impacts” - When cost to bury exceed company profits the utilization of non-purpose Levee mattress will be laid over the cable to save cost on major waterbodies including the Hudson River. The use of Levee Mattresses (designed to hold back Levees in the Western Rivers increase reef effect impacts. The impacts of Reef Effects have not been discussed and therefore inconclusive.
“Thermal Impacts” – “When electric energy is transported, a certain amount gets lost as heat, leading to an increased temperature of the cable surface and subsequent warming of the surrounding environment”.

“Thermal Impacts” are a factor of transmission cables however not identified was the Thermal Impacts in shallow burial depths or on the river bed where the cable is proposed to be sited for a great majority of its route and therefore inconclusive to the impacts to the marine environment including shortnose sturgeon and its marine environment.

New York is our home. Over 31,000 New York City residents earn their livelihood in the maritime industry. New York is now the second largest port in the United States and soon to be the LARGEST. Because we recognize the importance of balancing the working waterfront activities, we support environmental stewardship balanced with economic growth and welcome the opportunity to partner with DEC, FERC, and USACE to create a sensible to approach to cable routes. While these utility projects are important, the risks are too great to dedicate the bottoms of our navigable waterways to subsurface infrastructure. These projects should not be permitted in navigable waters unless they are perpendicular to the navigable channel and buried safely to avoid any chance of anchor strike or snag.

I wish to thank you in advance for your considerations to our needs and if you have any questions or concerns please feel free to email me at director@TBHC.com

Sincerely,

[Signature]

CAPT Eric Johansson, Executive Director
Towboat and Harbor Carriers Association
Port of New York/New Jersey

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