August 8, 2016

U.S. Coast Guard First District
C/O Mr. Craig Lapiejko
Waterways Management Branch

Subject: Proposed Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY
Docket Number USCG–2016–0132

Dear Mr. Lapiejko:

As requested per the Federal Register notice of June 9, 2016, we are providing comments on behalf of Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (collectively, “CHPE”) with regard to the new anchorage grounds proposed to be established in the Hudson River between Yonkers, N.Y. and Kingston, N.Y. While CHPE supports the designation of properly sited anchorages, it appears that the locations as currently proposed were hastily selected and that the underlying analysis is inadequate, lacking both a persuasive rationale and an appropriate consideration of current environmental and infrastructure conditions.

CHPE Background:
CHPE is developing the Champlain Hudson Power Express Project, a high voltage direct current transmission line capable of transferring 1,000 Megawatts of power between Canada and the USA (“the Project”). The Project route runs from the US-Canada border to a new converter station in Astoria, Queens, New York City covering 336 route miles. Approximately 60% of the route (197 miles) involves submarine (underwater) cable installation in lake and river sections, including the Hudson River. The Project has received approvals to place the Project cables in these waterbodies from both the New York State Public Service Commission and the U.S. Army Corps of Engineers (“USACE”).

Included in the development of the Project route was a comprehensive consultation with maritime industry representatives, the U.S. Coast Guard (“USCG”), and the U.S. Army Corps of Engineers (“USACE”) regarding navigational concerns. This multi-year effort will conclude with the finalization of a Navigation Risk Assessment (“NRA”) by Intertek, one of the world’s leading energy and water consultancy service providers. The NRA includes a sophisticated model that estimates the probability of interaction between river-going vessels and the Project’s cables using global, national, and local data, including Hudson River AIS traffic and USCG incident reports.
Because of this recent effort in support of Project permitting, CHPE possesses a robust understanding of navigational issues relating to the Hudson River as well as specific knowledge regarding current conditions along the waterway, and we feel that we are well qualified to raise a number of concerns regarding the anchorage areas suggested by the Maritime Association of the Port of NY/NJ Tug and Barge Committee, the Hudson River Pilot’s Association, and the American Waterways Operators (collectively, “the Proponents”).

Anchorage Site Selection:
The coordinates denoted in the Federal Register are essentially identical to those provided in a January 21st, 2016 letter from the Proponents to RDML Linda Fagan, District Commander of the First Coast Guard District. In this letter, the Proponents cited a December 3rd, 2015 Marine Safety Information Bulletin (“MSIB”) issued by the USCG warning commercial vessels not to anchor outside of federally designated anchorage grounds in the Hudson River and, as a result of this directive, requesting that the USCG “take immediate action to approve/designate the customary anchorage ground currently used in the Hudson River” as anchorage areas.

To verify that the proposed areas truly represent “customary anchorages”, CHPE engaged Intertek to cross reference the proposed anchorage areas with data from the Coast Guard’s Nationwide Automatic Identification System (“AIS”) traffic data for vessels in the Hudson River. Intertek mapped those locations where vessels remained in the same location for an extended period, indicating that they were anchored.

As shown in Figure 1, none of these anchoring events (shown by red dots) in January or July of 2015 took place in the proposed Milton, Marlboro, or Roseton sites. Instead, anchoring appears to be clustering at Clinton Point, in and around an area identified as a “cable area” on the NOAA navigation charts. Although we recognize that vessel traffic information extracted for only two months in one year might be thought of as a snapshot analysis, the relatively short time between the MSIB and the submission of these anchorage areas makes it reasonable to ask whether these sites are actual locations where vessels currently safely anchor or whether they were selected based on some other criteria. We recommend that the USCG conduct a review of AIS vessel traffic data along the Hudson River to ascertain customary anchorage areas based on actual maritime traffic.

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1 CHPE has no information as to why the Proponents selected three alternative locations in this area rather than a single location as appears to be the customary practice.
Consultation Process:
As noted above, the trigger for this proposed rulemaking was a letter sent to the USCG by the Proponents on January 21st, 2016. The date of this letter is significant inasmuch as, during the following week, CHPE held two meetings with stakeholders along the Hudson River, including representatives of the Proponents. While both the letter of invitation and the presentation invited comments on the “location of ‘safe havens’ and common anchoring areas outside of anchorage zones”, the minutes reflect that these areas were not shared with the attendees at these meetings. Instead, CHPE’s first formal notification of the specific proposed anchorage locations occurred on March of 15, 2016, when the USACE provided the letter referenced above.

This failure to provide this information is troubling inasmuch as it suggests that the level of due diligence conducted in proposing these locations was cursory at best. Not only was CHPE seeking this type of information as part of the development of the NRA, the stakeholder meetings included multiple owners of infrastructure within the Hudson River who may, even at this date, be unaware of the proposed anchorage areas. There may be marina operators, harbor masters,
and other regular waterway users who might wish to weigh in on this process. And, while not strictly a navigational issue, it seems likely to us that the concentration of vessels within these areas may result in a significant increase in noise and lighting for neighboring property owners (particularly if these are in fact new and not customary anchorage areas). None of these organizations or individuals are likely to be regularly scanning the Federal Register in order to obtain information regarding regulatory actions affecting the waterway contiguous to their homes or businesses. We therefore believe that it would be prudent for the USCG to ensure that outreach be conducted with other waterway users (e.g. infrastructure owners, mariners, other vessel operators) and that notification be provided to immediate property owners. We would note that this level of consultation is consistent with the guidance provided by the USACE and USCG in the development of the Project.

Infrastructure:
We also believe that the proposed anchorage areas need to be reviewed for intersection with existing and permitted infrastructure. As discussed at the outset, CHPE has been engaged in discussions regarding matters of navigation safety for a considerable period of time and has provided routing maps throughout the process. Based on this high level of interaction, we were disappointed to see that all but one of the proposed anchorage areas include at least a portion of our permitted route. The sole exception to this is the proposed Montrose Point anchorage, which is located in Haverstraw Bay (an area that the Project bypasses for environmental concerns). We are at a loss to understand why anchorage areas would be suggested without any outreach by the Proponents to a known project whose route is fully permitted, thus potentially increasing maritime safety concerns.

Based on our data\(^2\), it appears that the proposed anchorage areas cross over existing and historic infrastructure as well. While it will require in-water surveys to determine their exact location, the data suggests that the Roseton site has four infrastructure crossings (Figure 2) and that there is infrastructure within or in close proximity to the boundaries provided in the Federal Register for other proposed anchorage areas. We recommend that the USCG complete a thorough review to ensure that anchorage areas are not established over any existing, historic, or proposed infrastructure.

\(^2\) These locations were submitted to the USACE and so would have been available upon request.
Environmental Conflicts:
As part of the development of the Project, CHPE consulted extensively with NOAA’s National Marine Fisheries Service (“NMFS”) regarding Atlantic and shortnose sturgeon, which are federally listed endangered species. Of particular concern was the degree of potential disturbance to habitat for these species, as represented by the New York State Department of State’s Significant Coastal Fish and Wildlife Habitat (“SCFWH”) and areas identified by the New York State Department of Environmental Conservation (“NYSDEC”) as important habitat for these species (“Exclusion Zones”). Based on the use of construction windows, which avoid spawning and migratory patterns, and the relatively short periods of disruption, the state and federal agencies concurred there would be no significant impacts arising out of cable installation or maintenance.

In contrast to the informal anchoring that currently occurs along the Hudson River, the establishment of formal anchorage areas will tend to concentrate anchor drops in these areas of the river. In their January 21, 2016 letter, the Proponents suggest that “[T]rade will increase on the Hudson River significantly over the next few years with the lifting of the ban on American
Crude exports for foreign trade\(^3\), suggesting there may be more heavy anchors in the future. In reviewing the location of the proposed anchorage areas, it appears that all but one (Newburgh) intersect with SCFWH and/or Exclusion Zones. We recommend the USCG review these proposed areas with the NMFS and the NYSDEC to determine if the action of designating these new anchorage areas would trigger consultation under Section 7 of the Endangered Species Act.

Marlboro Anchorage:
The coordinates provided in the Federal Register for the proposed Marlboro site are identical to those in the January 21\(^{st}\), 2016 letter sent to the USCG by the Proponents. However, when mapped out (Figure 3), those coordinates do not correspond to the map provided in the Proponents’ letter (Figure 4) and, in fact, point #2 as referenced is located on land. This discrepancy may appear on the surface to be a simple housekeeping matter, but it goes to the level of care which went into preparing the request of the Proponents. Further, the known location of a sewer line to the east of the proposed anchorage area makes the exact location of this point critical for understanding impacts. We recommend the USCG confirm the location of each point of the proposed anchorage areas.

Figure 3: Proposed Marlboro Anchorage based on Federal Register Coordinates

\(^3\) CHPE is not convinced that this significant increase will occur based on available data but upon the advice of members of the maritime community has proceeded in the development of the NRA as if this event were going to occur for the purposes of due diligence.
Enforcement:
The triggering event for this proposed rulemaking, MSIB 2015-014, reminded commercial vessel operators that 33 CFR 110.155(1)(2) states, “Except in cases of great emergency, no vessel shall be anchored in navigable waters of the Port of New York outside of the anchorage areas established in this section…” The document further stated that, under current regulations, if a vessel must anchor due to an emergency, the operator should contact the USCG to inform it of the nature of the emergency. Yet in a February 9, 2016 letter to the USACE, the Hudson River Pilots Association stated that “anchoring outside of designated anchorage areas on the Hudson River is common practice.”
In order to achieve the goal of “safer and more efficient flow of vessel traffic”, any new anchorage areas must actually be utilized by the commercial vessels and their attending tug, tow, and/or push boats. It appears that vessels are currently not adhering to existing regulations. Therefore, we recommend that, whether or not any new anchorage areas are to be designated as part of this rulemaking process, the USCG should consider development and implementation of a plan to enforce existing navigation rules.

Conclusion:
Over the past seven years, CHPE has endeavored to develop a project which addresses the navigation concerns regarding the Hudson River which have been raised by regulatory agencies and members of the maritime community. Countless hours have been spent collecting, analyzing, and synthesizing data related to this waterbody, giving all involved a thorough understanding of existing conditions.

We support the designation of properly sited anchorage areas within the river, but we feel that the Proponents have not planned appropriately with regard to known infrastructure or environmental resource constraints in the locations proposed. Our preliminary review raises questions as to even whether these proposed areas represent actual anchorages in practice. Under the circumstances that prevail today, we strongly object to the proposed anchorage areas as laid out in the Federal Register and request that the USCG implement each of the recommended steps above as part of any future action on this issue. Further, given the issues discussed above as well as the misplaced boundary point for the proposed Marlboro Anchorage, we request that the action be re-noticed in the Federal Register and that a substantial comment period be afforded to the public.

Thank you for giving us the opportunity to comment on this matter and please feel free to contact me if you have any follow-up questions.

Respectfully,

Gene Martin
President and Chief Operating Officer