



DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. UL19-1-000; UL19-2-000]

Central Hudson Gas & Electric Corporation; Notice of Availability of Navigability Report for the Walkill River, Request for Comments, and Notice of Pending Jurisdictional Inquiry

On May 9, 2019, the Federal Energy Regulatory Commission (Commission) received a request from the U.S. Department of the Interior's Fish and Wildlife Service (FWS) for an updated jurisdictional determination for the unlicensed Sturgeon Pool and Dashville Hydroelectric Projects. The projects are located on the Walkill River in Ulster County, New York. In response to FWS's request, Commission staff is investigating the jurisdictional status of the Sturgeon Pool Hydroelectric Project (UL19-1-000) and Dashville Hydroelectric Project (UL19-2-000).

Pursuant to section 23(b)(1) of the Federal Power Act (FPA), 16 U.S.C. 817(1), a non-Federal hydroelectric project must be licensed (unless it has a still-valid pre-1920 Federal permit) if it: (a) is located on a navigable water of the United States; (b) occupies lands or reservations of the United States; (c) utilizes surplus water or waterpower from a government dam; or (d) is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935, and affects the interests of interstate or foreign commerce.

A stream is navigable under section 3(8) of the FPA if: (1) it is currently being used or is suitable for use, or (2) it has been used or was suitable for use in the past, or (3) it could be made suitable for use in the future by reasonable improvements, to

transport persons or property in interstate or foreign commerce. Navigability under section 3(8) of the FPA is not destroyed by obstructions or disuse of many years; personal or private use may be sufficient to demonstrate the availability of the river for commercial navigation; and the seasonal floatation of logs is sufficient to determine that a river is navigable.

Commission staff previously investigated the Commission's jurisdiction over the Sturgeon Pool and Dashville Hydroelectric Projects. In 1988, staff determined that the projects were non-jurisdictional based on staff's finding that the Wallkill River was not navigable at the location of the projects.¹ Commission staff's prior finding relied primarily on historical usage of the river. FWS requests that the Commission reexamine navigability of the Wallkill River and look specifically at the river's suitability for commercial use. A stream's suitability for commercial use can be demonstrated based on its physical characteristics, as well as its actual use or suitability for use for recreational boating, if this information shows the river is suitable for the simpler types of commercial navigation.²

As part of the current jurisdictional review, Commission staff prepared an updated navigability report for the Wallkill River. Before deciding on the jurisdictional status of the Sturgeon Pool and Dashville Hydroelectric Projects, the Commission will accept and consider comments on the navigability report. Comments may be filed no later January 22, 2024.

¹ See *Central Hudson Gas & Electric Co.*, 44 FERC ¶ 62,215 (1988) (Dashville Hydroelectric Project in Docket No. UL88-18-000); *Central Hudson Gas & Electric Co.*, 44 FERC ¶ 62,216 (1988) (Sturgeon Pool Hydroelectric Project in Docket No. UL88-22-000).

² See *FPL Energy Maine Hydro LLC v. FERC*, 287 F.3d 1151, 1158 (D.C. Cir. 2002) (affirming navigability finding based on stream characteristics and test trips by canoe).

This navigability report may be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket numbers, UL19-1 and UL19-2, excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The first page of any filing should include Docket Numbers UL19-1-000 and/or UL19-2-000.

For further information, please contact Jennifer Polardino at (202) 502-6437 or Jennifer.Polardino@ferc.gov.

Dated: December 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-28695 Filed: 12/27/2023 8:45 am; Publication Date: 12/28/2023]