



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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SECRETARY

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Secretary's Order No.: 2020-W-0005

RE: Application of Delmarva Power & Light for a Subaqueous Lands Lease (SL-413/19) for the Delmarva Power White Creek Utility Crossing Project, to wit: to install a sixteen-inch diameter by 564-foot long 25kV electric distribution line by directional bore at a minimum depth of 20 feet below the mudline of White Creek in Ocean View, Sussex County, Delaware.

Date of Issuance: February 26, 2020

Effective Date: February 26, 2020

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6003, 6004, 6006, Delaware's *Subaqueous Lands Act* (7 *Del.C.* Chapter 72), the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and all other relevant statutory authority, the Department of Natural Resources and Environmental Control ("Department" or "DNREC") issues this Order, approving the issuance of a Subaqueous Lands Lease (SL-413/19) to allow Delmarva Power & Light ("Applicant") to install and occupy a sixteen-inch diameter by 564-foot long 25kV electric power distribution feeder by horizontal directional drill ("HDD") 20 feet beneath the mudline of White Creek in Ocean View, Sussex County, Delaware ("Application"). The proposed HDD bore pits will occur in the upland areas, outside of the Department's jurisdiction, adjacent to the terminus of Daisey Avenue and Peaceful Lane in Ocean View, Delaware.

This proposed project necessitates the Applicant to obtain from the Department a Subaqueous Lands Lease (SL-413/19). The Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72) and the Department's *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504).

Background and Findings of Fact

As noted above, the Applicant proposes to install a sixteen-inch diameter by 564-foot long 25kV electric power distribution feeder by HDD 20 feet beneath the mudline of White Creek to maintain and enhance electric service reliability for its customers in Ocean View, Sussex County, Delaware. After having been deemed administratively complete, the Application was placed on public notice by the Department on June 26, 2019. During the public notice period, the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS"), received four written comments. One commenter, Mr. Gordon Wood, claimed that the proposed project lacked exact site plans, and that the community should have the opportunity to understand the material and economic impacts associated with the project.

Based on the public comments received, the Department determined that a public hearing was necessary. The announcement for a public hearing notice was placed on a twenty-day public notice on August 21, 2019. Thereafter, the Department received two additional letters voicing concerns about future dredging impacts to White Creek in Ocean View, Delaware.

Mr. Wood was provided with a copy of the Application and the plans associated with the proposed utility crossing of White Creek. It was also explained to Mr. Wood that the Department only has jurisdiction beneath White Creek, and that the bore pits and the remainder of the project were not within the Department's jurisdiction. It should also be noted that, in order to address concerns raised by the public during the public notice period, the Applicant slightly modified the original project site plans to avoid an existing docking facility. The revised plans increased the amount of pipeline in subaqueous lands by 82 linear feet.

Accordingly, the Department held its public hearing concerning this matter, as noticed, on October 1, 2019, which was attended by Department staff, representatives of the Applicant and Sovereign Consulting, Inc., and numerous individuals from the public. At the time of the hearing, the revised project site plans were fully vetted to the public. The hearing record was kept open for receipt of public comment through October 4, 2019. Proper notice of the hearing was provided as required by law.

Following the close of the public comment as noted above, and at the request of Hearing Officer Lisa A. Vest, the technical experts in the Department's WSLs prepared a Technical Response Memorandum ("TRM") to (1) specifically address the concerns associated with this Application, as set forth in the public comments received by the Department; (2) provide a regulatory review of this proposed project; and (3) offer conclusions and recommendations with regard to the proposed project for the benefit of the hearing record generated in this matter. The TRM provides a discussion of the comments received by the Department regarding matters specifically associated with the Application currently pending before the Secretary at this time. This TRM does not address, however, those comments that pertain to matters outside the permitting authority of the Department, nor is it responsive to any comments not specifically related to the pending Application, which was the subject matter of the public hearing held by the Department on October 1, 2019.

Subsequent to the Department's TRM having been received for inclusion into the Record, Hearing Officer Vest prepared her Hearing Officer's Report ("Report"), dated February 20, 2020. Ms. Vest's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve this Application, subject to the conditions set forth in the draft Subaqueous Lands Lease (SL-413/19), for the Applicant's use of public subaqueous lands for ten years. The Report also addressed the public comments received in this matter and concluded that the same did not warrant the Department's denial of this pending Application, nor the delay of this permit decision to receive any further additional information.

Reasons and Conclusions

This Application is for Delmarva Power & Light to install and occupy a sixteen-inch diameter by 564-foot long 25kV electric power distribution feeder by HDD 20 feet beneath the mudline of White Creek in Ocean View, Sussex County, Delaware. The proposed HDD bore pits will occur in the upland areas, outside of the Department's jurisdiction, adjacent to the terminus of Daisey Avenue and Peaceful Lane in Ocean View, Delaware. Preliminarily, I find that the proposed project will require the Applicant to obtain the above referenced Subaqueous Lands Lease (SL-413/19). I further find that the Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72), and the Department's *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504).

In reviewing the applicable statutes and regulations, the Department's experts in the Division of Water have concluded that the Applicant's proposed project, as described in detail in the Application, and as set forth herein above, complies with the Regulations administered by the WSLs. As noted previously, the jurisdiction of the Department is limited to the mean high-water line from bank to bank on White Creek. As stated previously, the bore pits are not within DNREC's jurisdiction.

In its TRM, the WSLs notes that no portion of the proposed project within the Department's jurisdiction will affect navigation, recreation, aesthetic enjoyment, natural resources, or other uses of subaqueous lands. The entire utility line within the Department's jurisdiction will not be visible, nor will it have any effect on the use or resources associated with the subaqueous lands of White Creek.

In further response to the concerns received by the Department, the WSLs coordinated with the Department's Shoreline and Waterway Management Section ("SWMS") about the potential impacts to future dredging projects within White Creek. As set forth in the aforementioned TRM, it is the opinion of the Department's experts in the SWMS that the proposed installation of the Applicant's powerline in the upstream portion of White Creek should have no impact on any future dredging work the Department may conduct in the waterway.

The Department's TRM correctly notes that all proposed activities within private or public subaqueous lands, channelward of the mean high-water line, require a Subaqueous Lands Permit and/or Lease from the State of Delaware. When determining if an applicant should perform activities on such lands, the WSLs considers the potential effect on the public, and the extent to which the public will benefit or suffer detriment from the project.

In the present case, the installation of a utility line below the bed of White Creek should have no effect on the public's use of this natural resource, as the utility line will be a minimum of 20 feet below the mudline of the navigable waterbody. Additionally, the utility line should not affect the inherent right of any property owner to wharf out with a docking facility. All parcels adjacent to the project already have docking facilities, and the proposed project will have no effect on the existing facilities. Moreover, the Department has required the Applicant to submit an as-built plan, with the utilization of a Tru Tracker system, to delineate the exact location of the utility line. Should an adjacent property owner decide to alter their docking facility, the Applicant will be required to visually mark the location of the utility line. As WSLs notes in the TRM, this would be a highly unlikely scenario, as the current alignment as set forth in the Application is a safe distance from existing structures. Nevertheless, the burden would be on the Applicant to physically mark the utility line, should the Department have concerns with future alteration of any adjacent docking facilities.

I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the statutes and regulations, as noted herein, and that the Record supports approval of the Application submitted by Delmarva Power & Light. Accordingly, this Order approves all permits required for this proposed project, consistent with the Record developed in this matter, and directs that the same be issued by the Department in the customary form, and with appropriate conditions intended to protect public health and the environment.

Further, the Department concludes and directs the following:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4), Delaware's *Subaqueous Lands Act* (7 *Del.C.* Ch. 72), the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and all other relevant statutory authority, to make a final determination on the Application, after holding a public hearing and considering all information contained in the Record generated in this matter;
2. The Department provided proper public notice of the Application of Delmarva Power & Light, and of the public hearing held on October 1, 2019, and held said hearing in a manner required by the law and regulations;
3. The Department has carefully considered the factors required to be weighed in issuing the Subaqueous Lands Lease required by the Applicant's proposed project, and finds that the Record supports approval of the Application and the issuance of the Subaqueous Lands Lease associated with same;
4. The Department shall issue Subaqueous Lands Lease (SL-413/19) to the Applicant. Furthermore, said Lease shall include all special conditions as set forth in the Department's draft permits, to ensure that Delaware's environment and public health will be protected from harm;

5. The Department adopts the Report and its attachments as further support for this decision;
6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
7. The Department shall serve and publish its Order on its internet site, and shall provide legal notice of the Order in the same manner that the Department provided legal notice of the Application.



Shawn M. Garvin
Secretary

