

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426  
February 25, 2015

OFFICE OF ENERGY PROJECTS

Project No. 13563-003—Alaska  
Sweetheart Lake Hydroelectric Project  
Juneau Hydropower, Inc.

Ms. Linda Speerstra  
Chief, Southeast Section  
U.S. Army Corps of Engineer District, Alaska  
Sitka Regulatory Field Office  
P.O. Box 16  
Sitka, Alaska 99835-0016

**RE: Letter of Understanding for the Sweetheart Lake Hydroelectric Project**

Dear Ms. Speerstra:

On May 29, 2014, Juneau Hydropower, Inc. (Juneau Hydro) filed a license application for the Sweetheart Hydroelectric Project No. 13563-003 (project). The project would be located on Lower Sweetheart Lake and Sweetheart Creek in the City and Borough of Juneau, Alaska. Construction of the proposed project would require the licensee to acquire permits from the U.S. Army Corps of Engineers (Corps), Alaska District, for activities associated with construction of the proposed project, as required under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

On June 5, 2014, the Federal Energy Regulatory Commission (Commission) issued a Notice of Application Tendered for Filing for the project. The notice requested agencies desiring to cooperate in the preparation of the environmental documents for the project to notify the Commission by July 28, 2014. On February 6, 2015, the Corps requested cooperating agency status for the preparation of the Environmental Impact Statement (EIS) for the project. The March 30, 2011, Memorandum of Understanding (MOU) with the Corps states that the Commission and the Corps will coordinate their respective regulatory processes associated with the authorizations required to construct and operate non-federal hydropower projects. The MOU establishes a framework for early coordination and participation between the Commission and the Corps for the review of an action on proposed non-federal hydropower development applications. This letter of understanding (LOU) establishes the Corps' cooperating agency status as well as the protocols the Corps and Commission staffs will adhere to in the preparation of the EIS for the project.

## **Responsibilities**

- ▶ Commission staff and Corps will adhere to the process schedules established by the Commission for the preparation and review of the Draft and Final EIS.
- ▶ Commission staff will provide the Corps with working drafts of the Draft and Final EIS.
- ▶ The Corps will return written review comments in Microsoft Word track change format on all working drafts of the Draft and Final EIS prepared by the Commission staff within 15 calendar days of their receipt. All comments made by the Corps will be reviewed for consistency and consolidated into one document before returning it to the Commission. Comments provided after the 15-day deadline will only be addressed as the schedule permits.
- ▶ In the event that the Corps has a substantial disagreement with staff's discussion of an issue in the working drafts of the Draft and Final EISs, the Corps will provide an alternative discussion in the Corps' comments on the drafts so that it can be reviewed by Commission staff in a timely manner, prior to the issuance of the Draft and Final EISs.
- ▶ In the event that the Corps requires a discussion of issues related to Corps' authorities not typically included in the Commission's EIS, the Corps agrees to provide that discussion for review by Commission staff in a timely manner consistent with the agreed upon schedule for working EIS documents. The Commission will use Corps' environmental analyses to the maximum extent possible, consistent with the Commission's responsibility as lead agency. The Commission and the Corps agree to assume responsibility for analyses in the issued Draft and Final EIS that pertain to their respective jurisdictional authority.
- ▶ Commission staff will revise documents to reflect the Corps' comments, unless substantive disagreements are involved regarding the documents' content. In cases of substantive disagreement, Commission staff will initiate a conference call with the Corps to resolve the difference.
- ▶ Mitigation and enhancement measures proposed by Juneau Hydro or recommended by stakeholders, including mandatory conditions submitted by state and federal agencies, will be evaluated in the Draft and Final EIS to determine their environmental benefits and their effect on the comprehensive development of Lower Sweetheart Lake and Sweetheart Creek, including project economics.

- ▶ As the lead agency under NEPA, the Commission is responsible for determining the purpose and need of the project for the EIS and licensing process. Although the Corps must exercise its independent judgment while carrying out its regulatory responsibilities, the Corps will give deference, to the maximum extent allowed by law, to the project purpose, project need, and project alternatives that the Commission determines appropriate for the project. The Commission will coordinate early with the Corps to ensure that the purpose and need, suite of alternatives, and the evaluation presented in the Draft and Final EIS are usable by the Corps in carrying out the Corps' legal responsibilities under its statutes and regulations.

### **Baseline**

- ▶ Per the Commission's policy, the current state of the environment is the baseline condition against which all alternatives in the EIS will be compared.

### **Communication**

- ▶ The Commission and the Corps staffs are free to communicate with each other on any issue related to the proposed project through the term of the LOU (i.e., until the issuance of the Final EIS document).
- ▶ Communications regarding the preparation of the Draft and Final EIS will be solely among the Commission, the Corps, and any other cooperating entity, and will be treated as pre-decisional, confidential, and protected to the extent permitted by law. Except as permitted by the Commission's rules governing off-the-record communications, 18 C.F.R. § 385.2201, other communications between the Corps and the Commission regarding the merits of the proceeding will be filed in the Commission's public evidentiary record in accordance with the Administrative Procedure Act (5 U.S.C. § 551 et seq.) and the Commission's adjudicatory process.
- ▶ The Commission and Corps staffs assigned to the project will register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this project.

### **Staff Coordination**

- ▶ John Matkowski will be the lead contact for the Commission at (202) 502-8576 or email at [john.matkowski@ferc.gov](mailto:john.matkowski@ferc.gov) and Matthew Brody will be the lead contact for the Corps at (907) 790-4493 or email at [matthew.t.brody@usace.army.mil](mailto:matthew.t.brody@usace.army.mil).

**Right to Intervene**

- ▶ Per the Commission's policy, an agency that has served as a cooperating agency in a proceeding may not thereafter intervene and become a party in the proceeding. By signing this LOU, the Corps acknowledges that it will not seek party status in this proceeding.

**Funding**

- ▶ This LOU is not a funds-obligating document. By signing this LOU, the parties are not bound to fund any action or initiative. Any actions of the Corps under this LOU are subject to and dependent upon the appropriation and allocation of sufficient funds to the Corps for such purposes.

**Termination**

- ▶ Either agency may voluntarily terminate its involvement in this LOU with 30 days written notice to the other agency. Failure, on the part of either agency, to abide by these terms shall be grounds for termination of this LOU.

We appreciate your interest in interagency cooperation and look forward to working with you and members of your staff. If you elect to be given cooperating agency status, please sign the concurrence below within 15 days from the date of this letter and return your concurrence to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. However, we understand that if you elect not to sign the concurrence, then you reserve your right to intervene in this case in the future.

If you have any questions, please contact John Matkowski at 202-502-8576 or [john.matkowski@ferc.gov](mailto:john.matkowski@ferc.gov).

Sincerely,

Vince Yearick  
Director  
Division of Hydropower Licensing

I concur with this LOU:

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Ms. Linda Speerstra  
Chief, Southeast Section

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Date

cc: Public files  
Service List

Document Content(s)

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