

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL ENERGY REGULATORY COMMISSION
AND
THE UNITED STATES COAST GUARD
FOR HYDROKINETIC PROJECTS**

I. Purpose

The Federal Energy Regulatory Commission (Commission) and the United States Coast Guard (USCG) within the U.S. Department of Homeland Security, herein called Participating Agencies, enter into this Memorandum of Understanding (MOU) to set forth terms by which the Participating Agencies will cooperate with each other as the Commission receives applications to site, construct, and operate hydrokinetic power generation equipment and facilities (proposed projects) in waters subject to the jurisdiction of the United States. The Commission is the lead federal agency for analyzing the environmental impact of the proposed projects pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321- 4347).

II. Introduction

The Commission reviews the siting of, and issues licenses for, the construction and operation of non-federal hydropower projects, including hydrokinetic projects. The USCG regulates, and is a subject matter expert on, matters related to safety of navigation, maritime security and marine environmental stewardship in waters subject to the jurisdiction of the United States.

Hydrokinetic projects are those designed to harness the power of waves, tides, currents, and the free-flow of rivers and streams. The goal of the Participating Agencies is to create an efficiency of effort and maximize the exchange of relevant information to provide developers of hydrokinetic projects and stakeholders with an efficient and predictable review process that is responsive to identified issues and considers appropriate protection, mitigation, and enhancement measures.

III. Statutory Authority to Enter MOU

The Commission enters into this MOU pursuant to the Federal Power Act (FPA), as amended (16 U.S.C. §§ 791a *et seq.*).

The USCG enters into this MOU pursuant to 14 U.S.C. § 93(a)(20), and 14 U.S.C. §141(a).

IV. Roles of the Participating Agencies

Commission. The Commission issues preliminary permits and licenses for non-federal hydropower projects, including not only those using dams, impoundments and diversions, but also hydrokinetic projects.

The Commission considers applications from potential project developers for preliminary permits, which, upon issuance, allow the permittee the right to preserve the priority of application for a license while the permittee obtains data and performs feasibility studies. In addition, before applicants can apply for a license, the Commission requires them to participate in a rigorous pre-filing process, and prior to issuing a decision on such an application the Commission conducts environmental, safety, and security reviews of hydropower and hydrokinetic projects and related facilities, including primary transmission lines. As the lead federal agency under the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321- 4347), the Commission prepares the overall NEPA analysis and documentation (18 C.F.R. Part 380). In conjunction with the NEPA review, the Commission takes a hard look at the environmental effects of, and reasonable alternatives to, the project as proposed, including appropriate mitigation and enhancement measures. A summary of that review, including conclusions and recommendations, is included in the NEPA document. The Commission will impose appropriate requirements in any license issued to ensure the safety and security of, and protect, navigation affected by projects within its jurisdiction including hydrokinetic projects.

During construction of the hydropower facilities, the Commission conducts periodic inspections to ensure the facilities are constructed in accordance with the plans and specifications, and any conditions attached to the license. Once construction is completed, the Commission conducts periodic inspections of the facilities focusing on equipment, operations, safety, and environmental matters, and monitors compliance with the terms of the license.

USCG. The USCG regulates, and is a subject matter expert on, matters related to navigation safety, maritime security and marine environmental stewardship for facilities and/or equipment located on, under, or adjacent to waters subject to the jurisdiction of the United States. The USCG exercises regulatory authority over hydropower projects which may affect the safety and security of waters subject to the jurisdiction of the United States under E.O. 10173, as amended, the Magnuson Act (50 U.S.C. § 191), the Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. § 1221, *et seq.*) and the Maritime Transportation Security Act of 2002 (46 U.S.C. Chapter 701).

V. Responsibilities of the Participating Agencies

A. Preliminary Permits. The Commission will require permit applicants to send copies of all applications for preliminary permits for hydrokinetic projects to the USCG, which will review such applications and provide comments during the preliminary permit comment period to the Commission on any concerns relating to USCG interests, roles, and associated missions at hydrokinetic projects, and any issues relating to the USCG's responsibilities which may arise during the term of the permit.

B. Licensing Pre-Filing Process. As part of the Commission's pre-filing process for license applications, an applicant must notify all resource agencies that may have jurisdiction over some aspect of the proposed project, including the USCG. Such notice must include a description of the project, its anticipated resource effects, and a request for recommendations regarding studies to be completed by the applicant. The USCG will provide comments to the Commission, with copy to the applicant, on the proposal and a

description of studies the USCG recommends the applicant undertake relating to USCG interests, roles, and associated missions. The USCG may work directly with the applicant so that the applicant can complete, prior to the filing of the application, any relevant studies needed to analyze such issues. Any questions regarding recommended studies should be handled in accordance with the Commission's procedures. To the extent that the Commission begins the NEPA process, such as environmental scoping and the preparation of a draft NEPA document, in the pre-filing stage, the USCG will cooperate with and support that process.

C. License Application Review. The Commission will be the lead federal agency responsible for the preparation of the analysis and decisions required under NEPA for the licensing of proposed hydrokinetic projects. The scope of this review extends to all relevant aspects of the project including siting, construction and operation, and environmental, socio-economic, and other impacts. As a federal agency which has special expertise, the USCG agrees to participate as a cooperating agency in the preparation of any required NEPA document for projects affecting these interests or other matters which may affect accomplishment of its responsibilities. The Commission's NEPA document is intended to fulfill the requirements of the USCG, as well as any other cooperating agency which may have jurisdictional oversight of some aspect of the proposed project. To the extent practicable, the NEPA document should convey complete information to the applicant, other federal agencies, involved stakeholders, and the public. However the Commission and the USCG may restrict disclosure during NEPA analysis of certain sensitive security information regarding critical energy infrastructure information.

1. Establish Project-Specific Cooperation to Review Impacts on USCG Interests, Roles, and Associated Missions. The Commission will notify the USCG as early as possible of the pending start of the NEPA review of a proposed hydrokinetic project on, in, or adjacent to navigable waters. The USCG will communicate its interest in cooperating and will provide a specific point of contact (or points of contact) for the project. The Commission will send the USCG a signed letter of understanding for the specific project that includes: (a) both the USCG's and Commission's points of contact; (b) a project-specific schedule for the project review process, including key times for consultation; and (c) reference to this MOU.

2. Develop and Share Data. The Participating Agencies will share the information gathered, considered, and relied upon by each of them. Specifically, the Participating Agencies agree to:

a. Identify as early as possible and develop information at the level of detail required to complete all necessary reviews for environmental issues, USCG interests, and any other matters relating to accomplishment of the USCG's responsibilities which may arise during the term of the license.

b. Provide the necessary support for the NEPA analysis to assess and evaluate:

- Impacts on USCG interests, and any other matters relating to accomplishment of the USCG's responsibilities which may arise during the term of the license;
- Effects of project siting, construction, and operation, including controls and plans; and
- Response plans to deal with any safety, security, or environmental emergency situations that might develop at the project.

c. Cooperate in the preparation of any requests for additional information, avoid duplicative requests, and compile an administrative record on which both Participating Agencies can rely.

d. Cooperate in evaluating alternatives by providing information that may assist USCG implementing any necessary or appropriate safety, security or exclusionary zones, regulated navigation areas, areas to be avoided, limited access areas, and other routing measures or systems for maritime traffic.

e. Cooperate in assessing protection, mitigation, and enhancement measures that will be conditions of the project license, including the construction, maintenance and operation by the licensee of such lights, signals and other means to assist navigation. The Commission will fully consider USCG recommendations regarding project approval and/or protection, mitigation, or enhancement measures provided to the Commission during the NEPA proceedings.

f. Attend public scoping and other meetings, as appropriate, to make presentations, receive comments from stakeholders, and answer questions on roles and responsibilities of each Participating Agency.

g. Promote electronic information filing and sharing, subject to the requirements of the Privacy Act of 1974, and any other requirements regarding the protection of classified, sensitive security, and commercially proprietary information, and ex parte restrictions. The Participating Agencies will endeavor to accept, to the extent practicable, electronic means of submitting information. When possible, direct access to electronic data will be made available. In addition, to the maximum extent practicable, the Participating Agencies will endeavor to synchronize information, such as adopting and using common naming identification for projects.

3. Review Studies. The Participating Agencies agree to cooperate in the prompt review of any studies the applicant undertakes to address USCG interests, roles, and associated missions, including the Navigational Safety Risk Assessment.

D. Construction, Operation and Inspection. The Participating Agencies further agree that they may cooperate in the inspection and review of licensed projects during the construction and operating phases, as appropriate. Each agency will offer the opportunity for the other to participate in project inspections and technical conferences with project

operators. Each agency will designate representatives to participate in the inspections and conferences.

E. Informal Communication. The Participating Agencies agree to communicate informally throughout the process to ensure that issues are discussed as soon as possible.

Communications regarding the NEPA analysis and preparation of the NEPA environmental documents will be solely among the Commission, the USCG, and any other cooperating entity under NEPA, 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 USCG 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 the USCG will expedite transmittal of documents through the use of email, express mail, or fax, to the greatest extent possible. The Commission will distribute to the USCG any letters sent by the Commission to the applicants during this process; agency and public comments received during the comment period for the environmental document; and any other formal correspondence by the Commission that is relevant to the USCG in the Commission's licensing of the project. The USCG will have access to the relevant docket numbers in the Commission's public files.

F. Intervention. The USCG understands that it is the Commission's policy that 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 MOU, the USCG acknowledges that it does not anticipate that it will seek party status in Commission hydropower licensing proceedings.

G. Dispute Resolution. Disputes regarding existing statutory requirements will be resolved by the relevant Participating Agencies using existing dispute resolution methods and in accordance with existing statutory authorities. If there are disagreements between the USCG staff and Commission staff regarding the provisions of this MOU, representatives of each staff will make every attempt to resolve the issues in dispute. If agreement is not reached within seven days of this initial meeting, the signatories of this MOU or their designated representatives will confer to attempt to resolve the disagreement.

H. Staff Support. The parties will endeavor to make personnel available to support mutual work objectives, workshops, conferences, seminars, training opportunities, committees, and teams, subject to the availability of appropriated funds. Exchange of services and personnel will generally be non-reimbursable, subject to applicable laws and regulations.

VI. General Provisions

A. Nothing in this MOU shall require either party to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the USCG will require execution of separate

agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

B. This MOU may be modified or amended upon written request of a Participating Agency and the subsequent written concurrence of the other Participating Agency. This MOU may be terminated by either Participating Agency upon sixty (60) days written notice of such termination by that Participating Agency to the other Participating Agency.

C. This MOU is intended only to ensure complete assessment of all hydrokinetic project proposals, construction, and operations and to improve the cooperation among the Participating Agencies. It is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. This MOU is not intended to direct or bind any person outside the Participating Agencies.

D. This MOU neither expands nor is in derogation of those powers and authorities vested in the Participating Agencies by applicable law, nor may it be interpreted to require either Participating Agency to undertake any action or omission that would be inconsistent with applicable laws or regulations.

E. This MOU is solely for the purpose of establishing internal procedures for the Participating Agencies to consider and deal with the various environmental issues and USCG interests, roles, and associated missions in the context of applications submitted pursuant to the FPA, and nothing in this MOU shall be construed to create a cause of action.

F. The Participating Agencies will review this MOU at least every 5 years from the date the MOU takes effect and will revise it as necessary.

VII. Contacts

A. The Participating Agencies designate the principal agency contacts identified in Attachment A. These contacts may be changed at a Participating Agency's discretion upon notice to the other Participating Agency.

B. Each Participating Agency will notify the other of any contacts to be used for specific projects.

C. Each Participating Agency will establish a method of making notifications to and obtaining information from the other Participating Agency when necessary outside of normal working hours, in the event of an extraordinary situation or emergency affecting a licensed project.

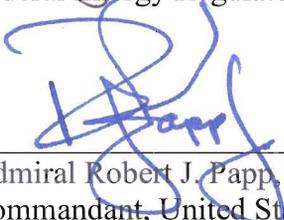
VIII. Effective Date and Duration

This MOU is effective upon execution by both agencies and shall remain in effect until amended by mutual agreement of the Participating Agencies or terminated in accordance with the procedures set forth herein.



Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission

3/6/2013
Date



Admiral Robert J. Papp, Jr.
Commandant, United States Coast Guard
Department of Homeland Security

21 FEB 2013
Date

Attachment A: Participating Agency Contacts

The following are the principal initial contacts for each agency:

Federal Energy Regulatory Commission

Stephen Bowler
Division of Hydropower Licensing
Office of Energy Projects
Federal Energy Regulatory Commission
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202-219-0205 (fax)

United States Coast Guard

George Detweiler
Navigation Standards Division (CG-NAV-3)
Commandant (CG-NAV-3)
ATTN: Navigation Standards Division
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