

1981

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
FEDERAL ENERGY REGULATORY COMMISSION  
OF THE DEPARTMENT OF ENERGY  
AND THE WATER AND POWER RESOURCES SERVICE\* OF  
THE DEPARTMENT OF THE INTERIOR

FOR

JOINT PARTICIPATION IN NON-FEDERAL HYDROPOWER DEVELOPMENT  
IN THE APPROVAL OF PLANS AND DRAWINGS, PROJECT ACCESS,  
POWER LEASE CHARGE AND USE OF LANDS ADMINISTERED BY THE WATER  
AND POWER RESOURCES SERVICE

In the interest of mutual cooperation for the expedient non-Federal development of hydroelectric energy, this Memorandum of Understanding is made between the Federal Energy Regulatory Commission, herein after referred to as the Commission, pursuant to the authority contained in the Federal Power Act, as amended, 16 U.S.C. §791 a et seq and the Water and Power Resources Service herein after referred to as Water and Power, pursuant to the interdepartmental work provision of 47 Stat. 417 (31 U.S.C. Section 686).

WHEREAS, the Commission is responsible for issuing preliminary permits and licenses to non-Federal entities for the development of hydroelectric powerplants under its jurisdiction, including power plants utilizing Federal dams or other facilities where Congress has not authorized power development as a project purj

WHEREAS, Water and Power has constructed water resources proje throughout the 17 Western States where a potential exists for

\* By Secretarial Order Number 3064 dated May 18, 1981, the name Water and Resources Service was officially changed to Bureau of Reclamation.

development of hydroelectric energy and is agreeable to the development of hydropower by non-Federal entities provided that in any license issued by the Commission hydroelectric development is found to be compatible with the purposes for which Congress authorized the project, and provided Federal hydroelectric facilities have not been authorized by Congress for construction.

NOW THEREFORE, in consideration of mutual cooperation and the encouragement of developing renewable resources in the promotion of hydroelectric energy at existing Water and Power facilities, the Commission and Water and Power agree to the following:

1. Approval of Plans, Drawings and Access

- a. The Commission will require in preliminary permits that the Permittee will coordinate with the appropriate Regional Director of Water and Power the powerplant planning and design, taking into account environmental considerations, to ensure compatibility with the authorized purposes, including operations, of the Federal facilities.
- b. The design and construction of only those facilities that will be an integral part of or that could affect the structural integrity or operation of the Federal project shall be done in consultation with and subject to the review and approval of Water and Power. The Commission reserves the

- right to resolve any disagreement between the Licensee and Water and Power regarding design and construction.
- c. In the event that the Commission does not resolve any disagreement to the satisfaction of Water and Power regarding design and construction activities under item b. above, resolution within the parameters of the alternatives presented will be made by a panel of qualified engineering specialists as mutually selected by the Commission and Water and Power. The Commission and Water and Power will agree to the panel's recommendations.
- d. The Commission will require the permittee or licensee to enter into an agreement to coordinate its plans with Water and Power for access to and site activities on lands and property administered by Water and Power so that the authorized purposes, including operation of the Federal facilities, are protected. In general, the agreement shall not be redundant with the Commission's requirements contained in any permit or license issued by the Commission and its regulations under Parts 4 and 12, 18 CFR and shall identify the facility, study and construction activities, as applicable, and terms and conditions under which studies and construction will be conducted. Water and Power Regional Directors shall coordinate details of agreements with the appropriate FERC Regional Engineers.

An agreement will be mainly composed of the following items: (1) Reasonable arrangements for access to the Water and Power site to conduct studies and construction activities, such access rights to be conditioned by Water and Power as may be necessary to protect the Federally authorized project purposes and operations; (2) Charges for technical studies by Water and Power and requirements to conduct studies (if necessary) that relate solely to the structural integrity of the Water and Power facility associated with power plant development, charges for review of designs including plans and specifications, and for construction inspections based on personnel costs; and (3) Charges for copies of reports, drawings and similar data based on printing and mailing costs, provided that charges shall not be assessed for information, services, or relationships that would normally be provided to the public. Should Water and Power fail to reach an agreement with Licensees and Permittees, the matter shall be referred to the Commission for resolution. The Commission agrees to require Licensees and Permittees to comply with such reasonable requirements as Water and Power may specify to ensure that the proposed studies and project construction will be consistent with the Federally authorized purposes and operations of the project.

2. Construction

- a. Copies of all correspondence between the licensee and Water and Power regarding the schedule and progress of the design review and approval will be provided to the FERC Regional Engineer. The FERC Regional Engineer will not authorize start of construction of any licensed project works affecting the structural integrity or operation of the Federal facility until Water and Power's written approval of the construction plans and specifications has been received. Water and Power will be provided a copy of plans and specifications as soon as they are received by the Commission and will make every effort to meet the Commission's timetable for review and approval.
  
- b. The FERC Regional Engineer will be responsible for surveillance of the construction activities within the licensed project boundary. The licensee's proposed construction inspection program will be furnished to Water and Power for review and comment prior to approval by the FERC Regional Engineer. The construction of the facilities will be inspected by the FERC Regional Engineer's staff during construction of the project, generally at monthly intervals. Copies of the reports of these inspections will be furnished to Water and Power.

If Water and Power elects to perform periodic inspections at critical stages of the construction of those portions of the licensed project works which affect the integrity of existing project structures, or the operation of the Water and Power project, a schedule of the proposed inspections will be furnished the FERC Regional Engineer. Copies of the Water and Power inspection reports will be furnished to the FERC Regional Engineer. Any construction deficiencies or difficulties detected by Water and Power's inspections will be promptly reported to the FERC Regional Engineer for referral to the licensee for appropriate action.

- c. Water and Power will bill the licensee for costs directly related to the review of design and construction of only those licensed facilities that affect the integrity and operation of the existing project structures. Copies of these bills and notification of payment will be furnished the FERC Regional Engineer and the Director, Office of Electric Power Regulation. Disagreement by either the licensee or Water and Power regarding reimbursement should be referred to the Director, Office of Electric Power Regulation for resolution.

d. The completed licensed facility will be inspected annually by the FERC Regional Engineer's staff to determine that the facility is being properly operated, maintained, and administered in conformance with license conditions. Copies of the reports of these inspections will be furnished Water and Power.

e. Those portions of the licensed project works that affect the integrity and operation of the Water and Power project may be inspected and evaluated by Water and Power. Copies of the reports of these inspections will be furnished to the FERC Regional Engineer.

f. Water and Power will assist the licensee in developing an emergency action plan setting forth procedures to be followed by the licensee in case of accident to or failure of the licensed hydroelectric facilities and will coordinate this plan with any emergency action plan developed by Water and Power for its existing and future projects.

### 3. Annual Charge for the Use of Government Facilities

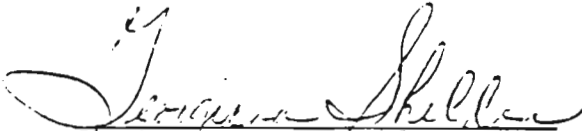
a. The Commission and Water and Power staff will continue to review the annual charge issue in an effort to develop a generic methodology for a reasonable annual charge to be assessed for the use of Water and Power facilities.


Both the Commission and Water and Power will work diligently to insure that all reasonable requests for non-Federal hydroelectric power development on Water and Power facilities will receive timely and proper consideration.

The Office of the Solicitor of the Department of the Interior and the Office of General Counsel of the Commission will coordinate the development of a modification clause for future adjustments to this memorandum of understanding.

This memorandum of understanding extends only to the specific issues enumerated herein and does not apply to other program responsibilities of Water and Power or the Department of the Interior. By signing this agreement, neither party shall be deemed to have waived any rights under applicable laws.

The above conditions are approved:

  
Chairman, Federal Energy  
Regulatory Commission

  
Commissioner, Water and  
Power Resources Service

May 22, 1981  
Date

June 22, 1981  
Date



## Memoranda of Agreement/Understanding

### Bureau of Reclamation

“Establishment of Processes for the Early Resolution of Issues Related To the Timely Development of Non-Federal Hydroelectric Power at Bureau of Reclamation Facilities,” November 6, 1992 (FERC/USDOJ). Establishes procedural steps and a set of rebuttable presumptions to guide the analysis of the agencies’ respective jurisdiction over hydro development at Reclamation dams. 58 Fed. Reg. 3269 (January 8, 1993). This guidance has been applied to the question of whether the Commission’s jurisdiction has been withdrawn as to a Corps of Engineers dam. See Troup County Board of Commissioners, 102 FERC ¶ 61,300 (2003) (P-12015, West Point Dam)

Under a November 2, 1981 MOU between the Commission and the Corps, all FERC-licensed hydropower projects using Corps-managed facilities require the licensee to design and construct project features that affect such facilities in a manner acceptable to the Corps. As a result, the Corps typically does not submit 4(e) conditions for licensed projects located at its dams and associated lands.

### Corp of Engineers

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### Federal Emergency Management Agency

“Memorandum of Agreement between the Federal Energy Regulatory Commission and the Federal Emergency Management Agency regarding Dam Safety Emergency Action Plan Training for State Regulated Dams.” October 10, 1993.

### U.S. Fish and Wildlife Service

“Memorandum of Understanding Between The Federal Energy Regulatory Commission And The U.S. Fish And Wildlife Service, Department Of The Interior, For Cooperation And Coordination Regarding Agency Review Of Hydroelectric Development Applications,” January 13, 1993.

### Washington State Department of Ecology

“Memorandum of Agreement Between The Federal Energy Regulatory Commission And The Washington Department Of Ecology Regarding Dam

Safety At Commission Licensed And Exempted Hydroelectric Projects,” August 11, 1992.