

MEMORANDUM TO: SEE DISTRIBUTION

SUBJECT: Guidance Letter No. 8, New Start Construction

Projects--Responsibility for Utility Relocations on Harbor Projects

1. References:

a. DAEN-CWR-N letter dated 9 April 1986, subject: Local Cooperation Agreements for FY 1985 Supplemental New Start Construction Projects.

b. EC 1165-2-144

2. Paragraph 3 of reference 1.a. provided that Corps permit authority was not to be invoked to facilitate the relocation of utilities in navigable waters of the United States. That policy was based on the premise that the non-Federal sponsor, and not the permittee, is the beneficiary of the project and is, therefore, responsible for these relocations. The following is a clarification of policy on utility relocations as a result of provisions contained in the Water Resources Development Act of 1986 (P.L. 99-662).

3. Utility Relocations on Harbor or Inland Harbor Navigation Projects--Depth Less Than 45 Feet. For navigation projects authorized for less than 45 feet in depth, Section 101(a)(4) of P.L. 99-662 requires that the non-Federal interests "shall perform or assure the performance of all relocations of utilities necessary to carry out the project." It is the basic responsibility of the local sponsor to assure that utilities are relocated at non-Federal expense. This does not affect any ability of the sponsor to arrange with the utility owner to perform the work, and/or to absorb the costs, of the relocations.

4. Utility Relocations on Harbor or Inland Harbor Navigation Projects--Depth in Excess of 45 Feet. For navigation projects authorized for greater than 45 feet in depth, Section 101(a)(4) further provides that one-half of the cost of each utility relocation be borne by the utility owner and one-half by the local sponsor. Again, as in paragraph 3 above, it is still the basic responsibility of the sponsor to assure that utilities are relocated at non-Federal expense. The 50-50 cost sharing between the owner and local sponsor applies even when the deepening being performed on a project authorized for greater than 45 feet is being deepened to less than 45 feet.

5. The local sponsor is not entitled to any credit for utility relocation costs against the cost sharing required in either Section 101(a)(1) or the 10 percent repayment required under Section 101(a)(2).

6. In either case the District may provide, as a service, the Engineering and Design,

Supervision and Inspection, and may administer the contract for the relocation, when such activities are paid for in advance.

7. Use of Federal Authority to Compel Utility Relocations. In those cases where the local sponsor has, despite every reasonable effort, failed to reach agreement with affected owners regarding utility relocations, and further, lacks the authority to compel the utility relocations, the Federal Government may elect to exercise Federal authorities to compel the utility relocations. Any such exercise of Federal power shall not, however, relieve the local sponsor of its statutory responsibility to assure the performance of the relocations at no expense to the Federal Government. Consequently, any Federal expenses incurred in relocation or alteration. Moreover, any Federal action shall in no way determine the ultimate apportionment of the relocation costs between the utility owners and the local sponsor. In all but deep-draft harbors (for which utility owners and local sponsors must share equally in utility relocation costs), the question of how utility relocation costs are shared is to be resolved between the local sponsor and the owners of the facilities being relocated.

8. If you have any further questions please contact Doug Lamont or Peter Luisa CECW-RN at 202-272-0464.

FOR THE COMMANDER:

BORY STEINBERG
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