

MEMORANDUM OF UNDERSTANDING

between

The Federal Energy Regulatory Commission and

The U.S. Department of the Interior

Concerning the Preparation of an
Environmental Document under the National Environmental Policy Act
and the Licensing of the Kahtaheena River (Falls Creek) Hydroelectric Power Project

Introduction

1. The purpose of this Memorandum of Understanding (MOU) is to establish general principles for the parties entering into this agreement regarding their compliance with the environmental review requirements of the National Environmental Policy Act (NEPA), the Council of Environmental Quality (CEQ) guidelines implementing NEPA, the Federal Power Act (FPA), Fish and Wildlife Coordination Act (16 U.S.C. 661-666), the National Historic Preservation Act (16 U.S.C. 470-470w) and the Glacier Bay National Park Boundary Adjustment Act of 1998 (the Glacier Bay Boundary Act, Pub. L. 105-317, 112 Stat. 3002), and to provide procedures for the potential licensing of Gustavus Electric Company's (GEC) Kahtaheena River (Falls Creek) Hydroelectric Power, Project No. 11659-000.

2. The proposed Kahtaheena project is unique in that: (1) this is the first hydropower project to be placed in what is currently designated wilderness within Glacier Bay National Park (the Park); (2) the National Park Service (NPS) is statutorily required to be a joint lead agency with the Federal Energy Regulatory Commission

(FERC) in the preparation of NEPA documents addressing licensing and any necessary land exchange; and (3) the FERC cannot issue a license without the Secretary of the Interior's concurrence in (a) FERC's conclusion that the project will not adversely impact the purposes and values of the Park as constituted after the consummation of the land exchange (Glacier Bay Boundary Act , section 2(c)(1)(A)), and (b) FERC's determination of the minimum amount of lands necessary for construction and operation of the project (section 3(b)(3)) .

WHEREFORE, it is the intent of the FERC and the Department of the Interior (DOI) to establish procedures to effectuate the purpose of the statute and to operate as partners in preparing NEPA documents, developing a record sufficient to allow the Secretary of the Interior to concur in FERC's determinations of project effects on the Park and the minimum amount of land necessary for project construction and operation, and consummating any land exchange necessary to authorize such project. To further this intent, the FERC and DOI enter into this MOU and establish the following terms:

Parties

3. The parties to this agreement are the U.S. Department of the Interior, acting through the National Park Service (NPS), and the Federal Energy Regulatory Commission.

4. FERC and NPS will each designate one person as an administrative liaison who shall be the respective agencies' point of contact for all communications with respect to the purposes of this agreement.

5. DOI's lead contact for this project is Bruce Greenwood of the NPS Alaska Support Office, Environmental Resources Team, 2525 Gambell, Suite 107, Anchorage, Alaska 99503-2892, telephone 907-257-2625, fax 907-257-2517, e-mail Bruce_Greenwood@nps.gov.

6. FERC's lead contact for this project is Robert Easton of the Office of Hydropower Licensing, Room 6H-07, 888 First Street, NE, Washington, DC 20426, telephone (202) 219-2782, fax (202) 219-2732, e-mail robert.easton@ferc.fed.us.

Terms

7. The parties agree that all NEPA procedures and documents shall meet the requirements of the Council on Environmental Quality regulations, as well as the regulations and procedures of each of the parties, to the greatest extent possible. Differences in procedures between FERC and NPS, if any, shall, to the greatest extent possible, be resolved by compliance with both procedures (e.g., if one agency's regulations or policies call for additional scoping meetings, then additional scoping meetings will be held). To the extent there is a direct conflict between NPS NEPA

procedures and FERC NEPA regulations at 18 C.F.R. Part 380 that cannot be resolved by compliance with both agencies' rules, then the FERC NEPA regulations shall apply.

8. Since this project involves siting a hydropower project in what is currently wilderness area of a national park, FERC and NPS agree to collaborate in deciding whether it will be necessary to prepare an environmental impact statement (EIS) to assess the impacts of this project. In the event that NPS and FERC do not agree on the need for an EIS, an EIS will be required for this project if either party determines an EIS is appropriate or desirable. Additionally, if FERC approves the applicant's use of alternative licensing procedures (ALP), FERC and NPS, as joint leads, will agree on the sufficiency of the applicant-prepared environmental assessment (APEA) that is filed with the license application under the ALP. If either FERC or NPS determines that additional studies or information are needed, then the FERC may require the GEC to provide such information.

9. In cooperation with NPS, FERC shall issue all letters and notices pertaining to the NEPA review of the Kahtaheena Project, including requests for studies or information. FERC shall provide NPS seven days from NPS's receipt of a draft or redrafted letter or notice in which to review and provide comments on the draft document. If NPS requests changes to the draft letter or notice, FERC shall either: (1) make the requested changes and issue the document; (2) address NPS's comments and submit a redrafted document for an additional review period; or (3) seek to resolve the

differences through the dispute resolution provisions of paragraph 17, below. It is the intent of the parties that this paragraph shall apply to all NEPA-related documents except for those documents covered by the terms of paragraph 15, below.

10. Any notices to be issued in connection with preparation of the NEPA document, and which are required to be published in the Federal Register, shall be processed through both the FERC and NPS internal procedures for issuance, and published by FERC in the Federal Register.

11. After issuance of the NEPA documents, but before issuance of any order issuing a license, FERC will provide the Secretary of the Interior with proposed findings on the minimum amount of lands necessary for construction and operation of the project (Glacier Bay Boundary Act, section 3(b)(3)) and on what terms and conditions will be imposed in the license to ensure that the project does not adversely impact the purposes and values of Glacier Bay National Park and Preserve (as constituted after consummation of the land exchange authorized by the Act). The Secretary of the Interior will have 28 days to review the proposed findings and to indicate whether the Secretary concurs in such findings. FERC will consider and address comments by the Secretary of the Interior on such proposed findings, and if differences exist, FERC will collaborate with the Secretary and seek to resolve all differences in a mutually satisfactory fashion, before issuance of an order issuing a license. The FERC may not issue a final order issuing a license without the required concurrence of the Secretary.

12. FERC and DOI will expedite transmittal of documents through the use of e-mail, telefax (fax), and express mail to the greatest extent possible.

13. If NPS, in its formal role as joint lead for NEPA compliance, has oral communications with GEC regarding the project, NPS shall document those communications in written summaries and provide a copy of the summaries to the NPS and FERC contacts identified in paragraphs 5 and 6, above. However, it is recognized that NPS may have communications with GEC which are outside the joint lead role of NPS for NEPA compliance. These type of communications, whether covered by a separate communication protocol or otherwise, are not covered by this agreement. The FERC shall issue a notice to be retained in the official FERC case file on this project, stating that the NPS should be provided a copy of any communication pertaining to this project that is addressed to FERC, and NPS shall issue and retain a notice in its official NPS file on this project, stating that FERC should be provided a copy of any communication pertaining to this project that is addressed to NPS.

14. FERC and DOI will consult with one another and seek to agree before releasing any information pertaining to this project under the provisions of the Freedom of Information Act, and will involve legal counsel to the extent necessary.

15. As joint leads, NPS and FERC agree to collaborate on the preparation of the NEPA documents. Decisions regarding which, if any, sections of the NEPA documents each party will be responsible for preparing shall be made after a decision is reached

regarding the need for an EIS or the extent of any needed revisions to an APEA that may be filed with the license application. Draft sections from each party shall be merged into a single NEPA document, and each party shall be provided with at least 28 days to review and comment on the draft NEPA document. NPS shall not be responsible for the costs of production of the final NEPA document, including but not limited to printing and distribution. Alternatively, GEC may elect to nominate a third party contractor, and upon approval by FERC and NPS, the contractor will prepare a preliminary (internal draft) EIS. If a contractor is used, contractor direction will be jointly provided by FERC and NPS. NPS and FERC will have 28 days to review a preliminary EIS. The contractor will prepare the draft and final EIS for public review based upon comments from FERC and NPS. GEC shall be responsible for all costs of a third party contractor. NPS shall have ten working days to review the final pre-print EIS prior to publication and distribution to the public. Any differences between FERC and NPS regarding direction to the contractor will be resolved through use of the procedures set out in paragraph 17, below.

16. The parties agree to coordinate their efforts so that any FERC order issuing a license and the DOI process for preparing and issuing a Record of Decision would be based on the same documents.


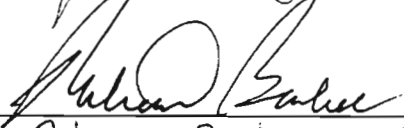
17. The parties shall conduct this process in a good faith effort to fulfill their respective statutory responsibilities concerning this project. If a dispute arises in regard

to the preparation of the NEPA document or the Secretary's concurrence in FERC's findings which cannot be resolved at the staff level, the issue will be considered by a group consisting of a FERC supervisor and attorney and a NPS supervisor and DOI attorney. If the matter cannot be resolved by such group, the issue will then be considered by the Regional Director for Alaska of the NPS and the Director of the Office of Hydropower Licensing for FERC, and if not resolved by these officials, the parties agree to attempt to resolve the issue by presenting the issue to their respective agency heads for a decision.

18. By signing this agreement, DOI formally withdraws its previous opposition to the use of the Alternative Licensing Procedures for this project, dated April 2, 1999.

19. This memorandum of understanding will become effective on the latest date of execution by one of the parties, and shall continue in force for five years, unless renewed for a longer period of time, or terminated by either party upon 30 days written notice. This memorandum of understanding may only be amended by the signed written agreement of the parties.

[Please type or print name and title of executing official.]

DOI	 for Pamela Bergmann Regional Environmental Officer	11/30/99 Date
NPS	 Robert Barbee, Alaska Regional Director	11/29/99 Date

FERC J. Mark Robinson 11/18/99
J. Mark Robinson, Director Division of Licensing and Compliance Date