

EDO Principal Correspondence Control

FROM: DUE: 06/11/08

EDO CONTROL: G20080341

DOC DT: 04/28/08

FINAL REPLY:

George S. Dunlop  
Department of the Army

TO:

L. Reyes, EDO

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO:

L. Reyes, EDO

DESC:

ROUTING:

Updating the Memorandum of Understanding (MOU)  
Between the Army Corps of Engineers and the  
Nuclear Regulatory Commission for Regulation of  
Nuclear Power Plants (EDATS: OEDO-2008-0384)

Borchardt  
Virgilio  
Mallett  
Ash  
Ordaz  
Burns  
Leeds, NRR  
Sheron, RES  
Miller, FSME  
Weber, NMSS  
Cyr, OGC

DATE: 05/13/08

ASSIGNED TO:

CONTACT:

NRO

Johnson

SPECIAL INSTRUCTIONS OR REMARKS:

Prepare response explaining agency's thoughts on  
updating MOU.

Template: EDO-001

E-RBS: EDO-01

# EDATS

Electronic Document and Action Tracking System

**EDATS Number:** OEDO-2008-0384

**Source:** OEDO

## General Information

**Assigned To:** NRO

**OEDO Due Date:** 6/11/2008 5:00 PM

**Other Assignees:**

**SECY Due Date:** NONE

**Subject:** Updating the Memorandum of Understanding (MOU) Between the Army Corps of Engineers and the Nuclear Regulatory Commission for Regulation of Nuclear Power Plants

**Description:**

**CC Routing:** NRR; RES; OGC; FSME; NMSS

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

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**File Routing:** EDATS

**Agency Lesson Learned:** NO

**Roadmap Item:** NO

## Process Information

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**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:**

## Document Information

**Originator Name:** George S. Dunlop

**Date of Incoming:** 4/28/2008

**Originating Organization:** Department of the Army

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**Addressee:** L. Reyes, EDO

**Date Response Requested by Originator:** NONE

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DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

APR 28 2008

Mr. Luis A. Reyes  
Executive Director of Operations  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Mail Stop O-16-E-15

Dear Mr. Reyes:

It is our understanding that the Nuclear Regulatory Commission (NRC) is interested in updating the Memorandum of Understanding between the Army Corps of Engineers and the Nuclear Regulatory Commission for Regulation of Nuclear Power Plants dated August 18, 1975. The Department of the Army and the Corps of Engineers (Corps) would be pleased to work with you on this important effort, predicated upon an understanding that any updated agreement is consistent with other current energy policies including the Memorandum of Understanding (MOU) between the Army Corps of Engineers and the Federal Energy Regulatory Commission for Interstate Natural Gas Pipeline Projects (July 11, 2005) and the MOU for Implementation of Section 365 of the Energy Policy Act of 2005 Pilot Project to Improve Federal Permit Coordination between the Corps, the Environmental Protection Agency, the Department of Agriculture and the Department of Interior (October, 2005).

We understand that the purpose of an MOU with the NRC is to more effectively integrate and streamline our processes, share information, and eliminate redundancies, in accordance with the Council on Environmental Quality's guidance, while still retaining each agency's statutory authority to make independent decisions.

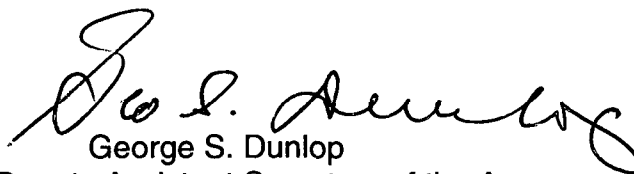
The Corps is charged with administering Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act. Although its jurisdiction is limited to Waters of the United States, including wetlands, as explicitly defined by regulation, we must consider the effects of proposed projects along with secondary and cumulative impacts under the National Environmental Policy Act (NEPA) when such impacts are not insignificant. NEPA, along with our regulations, requires the Corps to consider the effects of single and complete projects. The Corps cannot "segment" proposed activities. Together, your agency and the Corps must also consider the purpose and need for the entire project. The final purpose and need statement must comport with the statutory and regulatory requirements of both agencies. The Corps cannot authorize a single alternative or an applicant's preferred alternative. Rather, the Corps can only authorize the least environmentally damaging practicable alternative (LEDPA). For these reasons, it is critical that the agencies collaborate early and often through the project development and permit evaluation process so that at the end of the process the NRC's

preferred alternative and the Corps LEDPA are the same, if possible. Finally, we are obliged to clearly demonstrate compliance with the Clean Water Act section 404(b)1 Guidelines which require applicants to sequentially provide for any necessary mitigation: first, to avoid impacts to wetlands and waters of the U.S.; second, to minimize any unavoidable impacts, and; third, to compensate for those impacts to aquatic resources that are unavoidable.

NEPA compliance is required as part of the Section 404 permitting process. The cornerstone of the 404 NEPA process lies in the early scoping of issues and the development of acceptable and clearly defined alternatives. NEPA requires lead agencies to evaluate the environmental impacts associated with federally-funded projects. The lead agency on nuclear power plants would typically be the NRC. However, the Corps is required to implement NEPA in conjunction with Department of the Army permits issued for these projects. Ideally, the two processes can be conducted concurrently, with the Corps serving as a cooperating agency to avoid redundancy. As stated in 36 CFR Part 336.1(a), Section 404 of the Clean Water Act governs the discharge of dredged or fill material into waters of the U.S. The impacts of each alternative (including "no action") are then determined, and measures to mitigate potentially adverse impacts are developed. This sequence must be followed to comply with NEPA. The majority of problems that arise during the NEPA review process are related to inadequate public involvement and issue identification in the early phase of a project (scoping), inadequate development of project alternatives, use of poor quality data in defining baseline conditions for the entire project, and inadequate assessment of cumulative impacts. The key components to a successful NEPA project are early planning, effective coordination, and use of quality baseline data for the entire project.

I look forward to working with you and your staff to revise the existing MOU. This cooperative effort is also supported by Mr. John Paul Woodley, Assistant Secretary of the Army for Civil Works and Major General Don Riley, Deputy Commanding General for Civil and Emergency Operations for the Corps Headquarters office. The Corps HQ staff will be in contact with your office and offer to brief you on the Regulatory Program and its processes. It would be very helpful if we could be informed about NRC processes. Should you need any more information please contact Kimberly McLaughlin at (202) 761-4663 at the Corps Headquarters Regulatory Community of Practice offices. Thank you for your attention and support of this important undertaking.

Very truly yours,



George S. Dunlop  
Principal Deputy Assistant Secretary of the Army  
(Civil Works)

Enclosures

MEMORANDUM OF UNDERSTANDING  
IMPLEMENTATION OF SECTION 365 OF THE ENERGY POLICY ACT OF 2005 PILOT  
PROJECT TO IMPROVE FEDERAL PERMIT COORDINATION

United States Department of the Interior  
And  
United States Department of Agriculture  
And  
United States Environmental Protection Agency  
And  
United States Army Corps of Engineers

I. Parties and Participating Agencies.

- A. The Parties to this Memorandum of Understanding (MOU) are the United States Department of the Interior (DOI), the United States Department of Agriculture (USDA), the United States Environmental Protection Agency (EPA), and the United States Department of the Army (DOA).
- B. Participating agencies include:
  - 1. Within DOI, the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the Bureau of Reclamation (Reclamation), the Bureau of Indian Affairs (BIA), and the Minerals Management Service (MMS);
  - 2. Within USDA, the U.S. Forest Service (USFS);
  - 3. Within DOA, the U.S. Army Corps of Engineers (USACE); and
  - 4. The EPA.

II. Purpose.

- A. The purpose of this MOU is to establish policies and procedures to implement Section 365 of the Energy Policy Act of 2005, Pub. L. 109-58 (hereafter the "Act"). Section 365 establishes a Federal Permit Streamlining Pilot Project ("Pilot Project") with the intent to improve the efficiency of processing oil and gas use authorizations on Federal lands. Section 365 specifies that this MOU be signed within 90 days of enactment of the Act.
- B. The Act requires that within 30 days after the date of signing of the MOU, all Federal signatory Parties shall, if appropriate, assign to each of the Pilot Project BLM Field Offices identified, an employee with expertise in the regulatory issues relating to the office in which the employee is employed. The Act also requires that each employee so assigned report to the BLM Field Manager in the assigned Pilot Project Field Office not later than 90 days after the date of assignment. The Pilot Project BLM Field Offices are Rawlins and Buffalo, Wyoming; Miles City, Montana; Farmington and Carlsbad, New Mexico; Grand Junction/Glenwood Springs, Colorado; and Vernal, Utah. The Act also requires the Secretary of the Interior to assign to each Pilot Project Office any additional personnel necessary to ensure the effective implementation of the Pilot Project and other related programs administered by the

Field Office, including oil and gas inspection and enforcement activities related to energy development on Federal lands.

- C. This agreement represents an expression of intent between the Parties to work together to further the objectives of Section 365 of the Act with specific emphasis on developing a multi-agency Pilot Project to aid in the streamlining and coordinating of federal permit processing for onshore oil and gas operations on Federal lands.

### III. Authorities.

- A. The primary authority for this MOU is Section 365(c) of the Energy Policy Act of 2005 (Public Law 109-58). That section specifically references:
  - 1. Consultations and the preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1536);
  - 2. Permits under section 404 of the Federal Water Pollution Control Act (33 U.S.C. § 1344);
  - 3. Regulatory matters under the Clean Air Act (42 U.S.C. § 7401 *et seq.*);
  - 4. Planning under the National Forest Management Act of 1976 (16 U.S.C. § 472a *et seq.*); and
  - 5. Preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*).
- B. Section 365(f) of the Act specifies that the Secretary of the Interior shall assign any additional Department of the Interior personnel to the Pilot Offices necessary to ensure the effective implementation of the Pilot Project and other programs administered by the Pilot Offices, including inspection and enforcement related to energy development on Federal lands in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701 *et seq.*).
- C. Section 365(g) of the Act amends section 35 of the Mineral Leasing Act (30 U.S.C. § 191) to establish the Permit Processing Improvement Fund.

### IV. Principles and Goals.

- A. Principles for implementing this MOU include:
  - 1. The Pilot Project Offices will initially focus on interagency coordination and cooperation in the processing of permits required to support oil and gas use authorizations on Federal lands.
  - 2. The Pilot Project Offices will maintain or enhance high standards of safety and environmental protection through an effective oil and gas inspection and enforcement program for operations on Federal lands.
  - 3. Process streamlining and increased interagency efficiency, including elimination of duplication between Federal and state agencies, will be an important measure of success.
  - 4. All participating agencies will seek improved information sharing and use, as well as an improved understanding of respective agency roles and responsibilities.

5. An important measure of success will be the increased ability to process Applications for Permit to Drill (APDs) in a more timely manner.
6. A more rapid response to demands for oil and gas production on Federal lands will support the Nation's increased need for energy resources.
7. A more consistent approach among BLM Field Offices, and greater certainty in processing time requirements, are essential for improved customer service.
8. The financial resources made available through Section 365 should be used to enhance the capability to process oil and gas use authorizations, not as a replacement for base agency resources and responsibilities.
9. Interagency coordination mechanisms established through the Pilot Project should allow for adequate flexibility to adapt to changing demands and technologies related to oil and gas development.
10. Coordination with State agencies with expertise and responsibilities related to oil and gas use authorizations are an important component of a successful Pilot Project.
11. All permitting actions in the Pilot Offices are expected to promote responsible stewardship of Federal subsurface and surface resources.

B. Goals for implementing this MOU include:

1. Creation of better staff relationships among the participating agencies to improve performance of the Pilot Offices;
2. Placement of participating agency resources in locations that most effectively promote timely processing of APDs and associated agency approvals;
3. Focusing of appropriate BLM resources on inspection and enforcement activities;
4. Identification of new or improved interagency practices that should be used in other offices;
5. Identifying new or improved ways to increase the efficiency of the APD process;
6. Testing a variety of process improvement concepts in the Pilot Offices;
7. Preparation of a comprehensive Report to Congress that clearly identifies the lessons learned in the Pilot Offices;
8. Establishment of interagency coordination mechanisms that can adapt to changing demands or circumstances;
9. Measurement of increases in productivity resulting from additional resources provided through Section 365 of the Act; and
10. Identification of state agency coordination opportunities that could result in improved processing of oil and gas authorizations.

V. Roles, Responsibilities and Delegation of Authority.

A. Department of the Interior.

1. The Bureau of Land Management.

- a. General regulatory and management responsibilities. The BLM administers more than 261 million surface acres of public lands and 700 million acres of subsurface mineral estate (Federal land beneath surface lands owned or managed by other Parties, such as the USDA Forest Service, National Park Service, and US Fish and Wildlife Service).
- b. Pilot Project responsibilities. The BLM will administer the Pilot Project. In this capacity, the BLM will:
  - (1) Provide office space and general administrative support to other participating agency personnel assigned to the Pilot Offices;
  - (2) Establish oil and gas use authorization priorities to effectively coordinate interagency efforts;
  - (3) Coordinate periodic interagency contacts and meetings among the participating agencies to assess progress and resolve issues;
  - (4) Distribute funds to agencies participating in the Pilot Project;
  - (5) Prepare, in cooperation with the participating agencies, the required report to Congress;
  - (6) Work closely with the participating agencies to identify efficiencies in processing of oil and gas authorizations;
  - (7) Evaluate its APD process and work with the other participating agencies to improve its efficiency; and
  - (8) Oversee the implementation of this MOU to assure that the principles and goals of this MOU and the Pilot Project are achieved.
- c. Delegation of Authority. The BLM Field Office Manager is the Authorized Officer with respect to the BLM responsibility for approval of oil and gas use authorizations and inspection and enforcement on Federal lands managed by BLM.
- d. Anticipated Resource Needs. BLM will provide additional staff expertise as necessary to meet the specific needs of the individual Pilot Offices in satisfying the requirements of the Act. Such expertise may include a wide variety of physical, biological and technical support positions added as contract, temporary, term, or permanent positions, plus resources provided by the other participating agencies.

2. The Fish and Wildlife Service.

- a. General regulatory and management responsibilities. FWS is responsible for assisting other Federal agencies and the public in the conservation, protection, and enhancement of fish, wildlife, plants, and their habitats. A myriad of Federal statutes, executive orders, regulations and policies have



been enacted to ensure that environmental conservation is given full weight during project planning and implementation, including: the Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742a – 742j), Fish and Wildlife Coordination Act (FWCA; 16 U.S.C. § 661 *et seq.*), Clean Water Act (33 U.S.C. § 1251 *et seq.*), Migratory Bird Treaty Act (16 U.S.C. §§ 703 - 712), and the Bald and Golden Eagle Protection Act (16 U.S.C. §668). In particular, Section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. §§ 1531 *et seq.*), requires that Federal agencies ensure that the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their designated critical habitat. Federal regulatory agencies identified by Section 365 of the Act are required to consult with the FWS on projects potentially affecting any of these resources. Further, the Migratory Bird Treaty Act (MBTA; 16 U.S.C. §§ 703-712), prohibits the taking, killing, possession, and transportation of migratory birds, their eggs, parts and nests, except when specifically authorized by the Secretary of the Interior. The FWS consults on projects potentially affecting freshwater or marine resources and water quality. In accordance with Section 404(b)(1) of the Clean Water Act, the FWS provides advisory review for wetland protection. The FWS also has jurisdiction by law for specific permitting actions and by special expertise for other actions pursuant to the National Environmental Policy Act. Through these efforts, the FWS seeks to ensure that impacts to fish and wildlife resources are adequately described and that mitigation needs are met.

- b. Pilot Project responsibilities. The FWS will:
- (1) Assign appropriate FWS staff to assist and support the BLM Pilot Offices, as appropriate;
  - (2) Work in an integrated manner with the appropriate BLM Field Office to expedite necessary consultation and coordination procedures, including those required pursuant to Section 7 of the Endangered Species Act;
  - (3) Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations;
  - (4) Assist BLM as needed in other components of the oil and gas management program on Federal lands, including ESA section 7 monitoring;
  - (5) Coordinate its requisite reviews and integrate its decision making processes with the various BLM processes, including land use planning (including development or revision of Resource Management Plans), oil and gas leasing, and issuance of drilling permits. This integration will facilitate the development of new processes and procedures that will help to reduce uncertainty at the APD stage, resulting in substantially streamlined final reviews; and

- (6) Expedite its review of APDs, while concurrently engaging with BLM as a member of its land use planning team.

c. Delegation of Authority.

- (1) All FWS Pilot Program staff will be under the direct supervision of the FWS.
- (2) This MOU will not affect signature authority within the FWS.
- (3) The FWS staff located within BLM Pilot Project Field Offices, or pilot program staff located within the FWS Field Office, will have the authority and responsibility to:
  - (a) Identify issues and needed information regarding oil and gas use authorizations;
  - (b) Identify and implement process streamlining techniques; and
  - (c) Review and coordinate applicable BLM efforts as they may affect FWS authorities and responsibilities.

d. Anticipated Resource Needs.

- (1) The FWS will provide necessary staff resources to the BLM at the Pilot Project Offices. This includes FWS expertise regarding wetland consultation, migratory birds and raptors, NEPA, environmental contaminants, and ESA. All of these staffing obligations will not necessarily require any one individual but rather may require several individuals.
- (2) The FWS will provide approximately 10 full time equivalent employees (FTEs) to fulfill initial obligations under the Pilot Project. This figure may change as actual workload and capability needs are more clearly identified for each Pilot Office.

3. The Bureau of Indian Affairs.

- a. General regulatory and management responsibilities. BIA is responsible for the administration and management of 56 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. There are 562 federal recognized tribal governments in the United States. Developing forestlands, leasing assets on these lands, directing agricultural programs, protecting water and land rights, developing and maintaining infrastructure and economic development are all part of the agency's responsibility.
- b. Pilot Project responsibilities. The BIA will:
  - (1) Assign appropriate BIA staff to the BLM Farmington Field Office;
  - (2) Work in an integrated manner with the appropriate BLM Field Office to expedite the necessary consultation and coordination with Navajo interests in the checkerboard landownership area;

- (3) Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations; and
    - (4) Assist BLM, as requested, in other components of the oil and gas management program on Federal lands or subsurface mineral estate.
  - c. Delegation of Authority. Authority to act on oil and gas use authorization issues will be delegated to the lowest appropriate level.
  - d. Anticipated Resource Needs. BIA will provide one position to BLM for carrying out its Pilot Project responsibilities. That person will be referred to as the Navajo Permit Coordinator. The Navajo Permit Coordinator will be a BIA employee whose function is to coordinate with the Navajo Tribe, Eastern Navajo Chapters, and Navajo families living in the checkerboard landownership area.
- 4. The Minerals Management Service.
  - a. General regulatory and management responsibilities. The MMS Minerals Revenue Management (MRM) Division collects, accounts for and distributes revenues associated with mineral production from leased Federal and Indian lands.
  - b. Pilot Project responsibilities. The MRM will be responsible for transferring 50 percent of the onshore oil and gas rental income from the United States Treasury to the "BLM Permit Processing Improvement Fund", established by Section 365(g) of the Act, for the administration of the Pilot Project Offices.
  - c. Delegation of Authority. Authority to act on oil and gas related management actions under the Pilot Project will be delegated as MMS determines to be appropriate.
  - d. Anticipated Resource Needs. No additional resource needs, beyond those already in place for revenue management, have been identified at this time.
- 5. The Bureau of Reclamation.
  - a. General regulatory and management responsibilities. Reclamation is responsible for administering federal water projects in 17 Western states. Reclamation is the largest wholesaler of water in the country bringing water to more than 31 million people and providing one out of five Western farmers (140,000) with irrigation water for 10 million acres of farmland. Reclamation is also the second largest producer of hydroelectric power in the western United States. Through an existing national interagency agreement, dated March 25, 1983, the BLM Carlsbad and Farmington Field Offices lease and approve APDs on Reclamation lands.

- b. Pilot Project responsibilities. Reclamation will:
  - (1) Assign appropriate Reclamation staff to support both the BLM Carlsbad and Farmington Field Offices;
  - (2) Work in an integrated manner with the appropriate BLM Field Office to expedite the necessary consultation and coordination with Reclamation responsibilities; and
  - (3) Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations.
- c. Delegation of Authority. Authority to act on oil and gas related management actions will be delegated to the lowest appropriate level.
- d. Anticipated Resource Needs. Reclamation will provide BLM with one Reclamation staff position to facilitate and expedite cooperative planning, compliance with any requirements that must be met in order for Reclamation lands to be leased, and the processing of APDs. This position would be a shared position between the Carlsbad Field Office and the Farmington Field Office.

B. Department of the Army.

1. The U.S. Army Corps of Engineers.

- a. General regulatory and management responsibilities. The USACE is responsible for administering laws for the protection and preservation of waters of the U.S., pursuant to the requirements of section 10 of the Rivers and Harbors Act (RHA) of 1899, section 404 of the Clean Water Act (CWA) of 1972, and section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972. Under the RHA, the USACE may authorize work and or structures in or affecting the course, condition, location, or capacity of navigable waters of the U.S. Under the CWA, the USACE may authorize the discharge of dredged or fill material into waters of the U.S., using the least environmentally damaging practicable alternative.
- b. Pilot Project responsibilities. The USACE will:
  - (1) Expedite environmental permits in accordance with the purpose, terms, and conditions of this MOU;
  - (2) Consult with the BLM regarding an adjustment of priorities under this MOU or establishment of relative priorities under this MOU if the current and/or projected workload of priority projects and activities exceeds the USACE ability to provide the services specified in this MOU;
  - (3) Work in an integrated manner with the appropriate BLM Field Office to expedite the necessary consultation and coordination with USACE responsibilities;

- (4) Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations;
  - (5) Assist BLM, as requested, in other components of the oil and gas management program; and
  - (6) Provide the BLM an annual summary report of progress made under this MOU. This report will describe achievements, including any improvements the USACE has documented in coordinating and improving the efficiency of environmental reviews and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOU.
- c. Delegation of Authority. The District Engineer or his or her designee is the final decision maker for USACE actions related to oil and gas use authorizations on Federal lands. If the USACE project manager rendering final action on a permit application occupies a position funded under section 365(g) of the Act, the final decision maker will be at least the supervisor of that person.
  - d. Anticipated Resource Needs. Given existing and projected workloads, no single BLM Pilot Field Office requires a full time USACE position to ensure that the processing of necessary permits under Section 404 of the Clean Water Act are given high priority over other USACE workloads. The USACE will, if necessary, provide additional staff resources to affected USACE State Offices to satisfy its responsibilities under section 365 of the Act.

C. Department of Agriculture.

1. The U.S. Forest Service.

- a. General regulatory and management responsibilities. The USFS is responsible for the surface management of 192 million acres of National Forest System (NFS) Lands. The Mineral Leasing Act of 1920 as amended and the Mineral Leasing Act for Acquired Lands define the role of the Forest Service in the management of leasable energy resources, including oil and gas. The Forest Service cooperates with the BLM to ensure that management goals and objectives for oil and gas exploration and development activities are achieved, that operations are conducted to minimize effects on surface resources, and that the land affected by operations is rehabilitated. The BLM issues and administers oil and gas leases on NFS lands only after the Forest Service has made a leasing availability decision and taken the action necessary for the BLM to offer available lands for lease. Once a Federal lease on NFS lands is issued, the Forest Service has full responsibility and authority to approve and regulate all surface-disturbing activities associated with oil and gas exploration and development through analysis and approval of the Surface Use Plan of Operations (SUPO), a component of an APD.

- b. Pilot Project responsibilities. The USFS will:
- (1) Assign to each Pilot Office that includes NFS lands an employee to work in partnership with the BLM. This employee will have responsibility to facilitate the timely processing, implementation, and inspection of oil and gas-related permits on NFS lands. Duties of this employee will include:
    - (a) Providing a communication link between the BLM Pilot Office and the local Forest Service Office;
    - (b) Assisting in determining skills and personnel the USFS must provide to ensure efficient and timely processing of requests for leases, Surface Use Plans of Operations, and associated project proposals;
    - (c) Serving as project manager for proposed oil and gas projects on NFS lands, including leasing analyses, APDs, pipelines, roads and other projects required for the development of oil and gas resources;
    - (d) Assisting in coordinating and conducting field reviews of proposed oil and gas projects on NFS lands, including onsite reviews;
    - (e) Ensuring that oil and gas-related permit applications on NFS lands are processed in compliance with the requirements of Sec. 366 of the Energy Policy Act of 2005 and BLM's Onshore Order No. 1; and
    - (f) Ensuring that inspections of all oil and gas drilling and producing operations on NFS lands are carried out yearly and that remedial actions are taken when operations are not in compliance with surface use plans, applicable Land and Resource Management Plans, and/or statutory and regulatory requirements.
  - (2) Develop an action plan within four months of the establishment of the Pilot Offices. The action plan will:
    - (a) Identify internal process challenges and propose process efficiencies; and
    - (b) Establish USFS procedures for conducting permitting and administration of oil and gas operations on NFS lands covered by the Pilot Offices.
  - (3) Within six months of the establishment of the Pilot Offices, review pending projects (APD backlog) on NFS lands covered by the Pilot Project and designate timeframes and checkpoints for progress on active projects and identify those that are inactive and can be removed from consideration.

- (4) Twice yearly the Pilot Project Liaison will report to the Forest Supervisor and BLM Field Manager successes and challenges associated with the Pilot Project and make recommendations to improve efficiencies and cut timeframes for processing APDs on NFS lands. The report will also include an estimate of pending lease applications and APDs, and progress on inspection and enforcement of operations on NFS lands.
- c. Delegation of Authority. Signatory authority for approval of actions related to oil and gas on NFS lands is identified in Forest Service Manual 2820.
- d. Anticipated Resource Needs. The USFS anticipates the initial resource assignment to be four positions. This may change as experience is gained in the Pilot Offices. The Forest Service will also provide other personnel, as necessary, to individual Pilot Offices. Other personnel include those with specific expertise necessary to meet the intent of the Act, such as planning/NEPA, archeology, wildlife, and inspection and enforcement.

D. Environmental Protection Agency.

1. General regulatory responsibilities. The EPA is responsible for administering a wide range of environmental laws. EPA responsibilities relevant to the oil and gas development permitting process include, but are not limited to, commenting on an EIS under section 309 of the Clean Air Act (CAA), the authority to participate in the section 404 Clean Water Act (CWA) permit process, and the authority to issue, and/or review state- and tribe- issued, permits for activities that involve discharges of pollutants subject to the requirements of the National Pollutant Discharge Elimination System or the CAA.
2. Pilot Project responsibilities. The EPA will:
  - a. Work in an integrated manner with the appropriate BLM Field Office to expedite the necessary consultation and coordination related to EPA responsibilities;
  - b. Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations;
  - c. Assist BLM, as requested, in other components of the oil and gas management program;
  - d. Continue general coordination and consultation with BLM on oil and gas activities on Federal lands; and
  - e. Conduct annual coordination reviews with BLM to analyze changing workloads and processes to determine if review or process changes are appropriate to achieve greater efficiency in the processing of oil and gas use authorizations.
3. Delegation of Authority. Authority to act on areas of EPA responsibility related to oil and gas development on Federal lands will be delegated to the lowest appropriate level.

4. Anticipated Resource Needs. Assignment of specific personnel to the BLM Pilot Offices does not appear necessary at this time because a significant portion of EPA's responsibilities related to the Clean Water Act and the Clean Air Act have been authorized to be administered by the respective states.

VI. Measures of Success or Change for the Pilot Program.

- A. Success Measures. Measures of success for the Pilot Program include:
  1. The streamlining of and increased interagency efficiency in processing APDs and associated agency approvals, including elimination of duplication between Federal and state agencies;
  2. The increased ability to more timely process and issue APDs that will withstand administrative and judicial challenge; and
  3. Maintenance or enhancement of high standards of safety and environmental protection through an effective oil and gas inspection and enforcement program.
- B. Data for Measuring Success. In each Pilot Project Office, the following, at a minimum, will be tracked and measured:
  1. The total number of APDs received, processed, and approved;
  2. The elapsed time from receipt to approval, including the time required for major APD steps or components;
  3. Inspections completed and the time and resources needed for each inspection;
  4. The number and percentage of leases found to be in substantial compliance with applicable standards; and
  5. Process efficiencies identified and implemented and approximations of time and resources saved by such efficiencies.
- C. The information identified in the preceding paragraph will be collected for three years after enactment of the Act and will be compared to the same parameters in each Field Office for the previous three years.

VII. Principal Contacts.

- A. U.S. Forest Service.  
Director, Minerals and Geology Management  
1400 Independence Ave., SW  
Washington, DC 20250
- B. Department of Interior.
  1. Bureau of Land Management.  
Assistant Director, Minerals, Realty, and Resource Protection  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240



2. U.S. Fish & Wildlife Service.  
Assistant Director, Fisheries and Habitat Conservation  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240
  3. Bureau of Reclamation.  
Deputy Commissioner for Operations  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240
  4. Bureau of Indian Affairs  
Regional Director, Navajo Regional Office  
Gallup, New Mexico, 87305
  5. Minerals Management Service.  
Associate Director, Minerals Revenue Management  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240
- C. Environmental Protection Agency  
Director, Office of Federal Activities  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460
- D. U.S. Army Corps of Engineers.  
Headquarters  
Chief, Regulatory Programs  
441 G Street, NW  
Washington, DC 20314

#### VIII. Funding

- A. Section 365(g) of the Energy Policy Act of 2005 amends Section 35 of the Mineral Leasing Act (30 U.S.C. 191) by authorizing funding to "...the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, for the coordination and processing of oil and gas use authorizations on onshore Federal land under the jurisdiction of the Pilot Project offices...."
- B. Section 365(h) of the Energy Policy Act of 2005 authorizes the Secretary of the Interior to expend or transfer funds as necessary to the identified agencies participating in the Pilot Project.

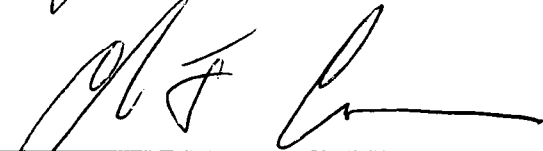
- C. The details of the levels of support to be furnished to the FWS, BIA, Reclamation, USACE, Forest Service, and EPA by the BLM with respect to funding and personnel will be developed in specific Interagency Agreements, contingent on the availability of funding.
- IX. Report to Congress. No later than 3 years after the date of enactment of the Act, the Secretary of Interior is required by Section 365(e) of the Act to submit to Congress a report that:
- A. Outlines the results of the Pilot Project to date, and
  - B. Makes a recommendation to the President regarding whether the Pilot Project should be implemented throughout the United States.
- X. Duration. The Act mandates the establishment of a Fund for the seven Pilot Project Offices' expenditures through fiscal year 2015. Expansion of the Pilot Project is dependent upon the report to Congress required by Section 365(e) of the Act and the Secretary of the Interior's recommendation and the President's subsequent action on the recommendation.
- XI. Modification. If the Parties decide to change the scope of the Pilot Project, this MOU will be revisited and modified as necessary. All Parties potentially affected by a modification must sign the modification for it to be effective.
- XII. Meetings. The participating agencies plan to meet on a bi-annual basis to discuss the progress and lessons learned associated with the Pilot Project. Additional coordination meetings or conference calls may be held as needed.
- XIII. Dispute Resolution. If a dispute arises under this MOU that is not resolved informally between or among the Parties, then any Party may pursue the following dispute resolution procedure:
- A. The Party that seeks resolution will provide a written statement of its dispute, along with any rationale or supporting documents, to the other interested Parties. The Parties will engage in discussions in an attempt to arrive at a consensus and resolve the dispute.
  - B. If no resolution is reached within thirty (30) calendar days of receipt of the statement of dispute, then the dispute may be elevated to the Parties' respective headquarters-level officials, or their designees. The headquarters-level officials for the Parties will engage in discussions in an attempt to arrive at a consensus. If consensus is not achieved by the headquarters-level officials within thirty (30) calendar days of their receipt of the statement of dispute, the Parties will promptly elevate the matter to the principal policy makers for the respective Parties, who will resolve the matter.
  - C. The time limits in the preceding paragraph may be extended on the mutual agreement of the Parties to the dispute.
- XIV. Supplemental Agreements. Subsequent to the signing of this MOU, additional Federal or state interagency agreements may be required for the purposes of outlining more specific interagency relationships or for transferring funds from the BLM to such state or Federal agencies.

XV. No Private Right of Action and Limited Applicability. This MOU is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a person against the United States, its agencies, its officers, or any person. This MOU does not direct or apply to any person outside of the signatory Parties.

ACCORDINGLY, the Parties have signed this Memorandum of Understanding on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

  
\_\_\_\_\_  
SECRETARY OF THE INTERIOR

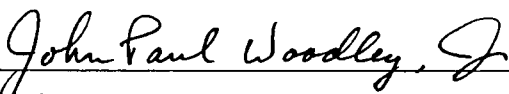
OCT 24 2005  
DATE

  
\_\_\_\_\_  
SECRETARY OF AGRICULTURE

OCT 19 2005  
DATE

  
\_\_\_\_\_  
ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

OCT 18 2005  
DATE

  
\_\_\_\_\_  
ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

OCT 19 2005  
DATE



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

11 JUL 2005

MEMORANDUM FOR DIRECTOR OF CIVIL WORKS

SUBJECT: Memorandum of Understanding between the Army Corps of Engineers and the Federal Energy Regulatory Commission for Interstate Natural Gas Pipeline Projects

On June 30, 2005, the Assistant Secretary of the Army for Civil Works and the Chairman of the Federal Energy Regulatory Commission (FERC) signed the enclosed Memorandum of Understanding (MOU) to further streamline respective regulatory processes through early coordination to identify project purposes, need, and alternatives that can be used by each agency in carrying out its respective legal responsibilities. The MOU acknowledges that FERC is the lead agency for purposes of complying with the National Environmental Policy Act (NEPA) and that FERC is responsible for authorizing the construction and operation of interstate natural gas pipelines. The MOU also acknowledges that the Army Corps of Engineers is responsible for the protection and preservation of Waters of the United States, including wetlands, under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

Although FERC is responsible for determining purpose and need for purposes of its certificates of public convenience and necessity under Section 7 of the Natural Gas Act and for the FERC NEPA document, the Corps must exercise independent judgment in carrying out its regulatory responsibilities under the Clean Water Act and the Rivers and Harbors Act. The Corps will give deference, to the maximum extent allowable by law, to the project purpose, project need, and project alternatives that FERC determines to be appropriate for the project. In according FERC such appropriate deference, the Corps must identify and use a project's "basic purpose," plus "overall project purposes," to satisfy the requirements of the Section 404(b)(1) Guidelines, and specifically to identify the "least environmentally damaging practicable alternative," the only alternative that can be permitted by the Corps under Section 404 of the Clean Water Act. In addition, the Corps must identify and use a project's "public and private need" and a project's "objective" to determine whether or not a proposed project satisfies the Corp's public interest review for both 404 and Section 10 permits.

If the Corps cannot concur nor conditionally concur with FERC determinations as to purpose, need, alternatives, etc., such disputes shall be resolved at the lowest level possible and in accordance with the dispute resolution process outlined in Paragraph 8 of the MOU. In such instances, districts and divisions may sequentially elevate the matter to the Office of the Assistant Secretary of the Army who will address the matter along with the Director, FERC Office of Energy Projects.

Energy projects are a priority for this Administration in accordance with the Presidents Executive Order 13212, "Actions to Expedite Energy-Related Projects,"

implemented on May 18, 2001. The Corps should be responsive to FERC timelines. The Corps should actively engage early in the process with FERC to ensure processes are integrated to the maximum extent possible and support FERC in the development of purpose, need, and alternatives so that the FERC documentation is also supported by Rivers and Harbors Act, Clean Water Act, and NEPA requirements.

The MOU is effective immediately. Please provide this memorandum and the MOU to all Commanders and regulatory offices. Districts and divisions should post the MOU on their regulatory web pages. I would like to thank your Headquarters regulatory staff and others in the Vertical Team for their most excellent work and support as we developed this MOU in partnership with the FERC.



John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

Enclosure

CF:

CRC

SACW (Read, Sign, File)

CECW-O

CECW-OR

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**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**UNITED STATES ARMY CORPS OF ENGINEERS**  
**And**  
**THE FEDERAL ENERGY REGULATORY COMMISSION**  
**SUPPLEMENTING THE INTERAGENCY AGREEMENT ON EARLY**  
**COORDINATION OF REQUIRED ENVIRONMENTAL AND**  
**HISTORIC PRESERVATION REVIEWS CONDUCTED IN CONJUNCTION WITH**  
**THE ISSUANCE OF AUTHORIZATIONS TO CONSTRUCT AND OPERATE**  
**INTERSTATE NATURAL GAS PIPELINES CERTIFICATED BY THE FEDERAL**  
**ENERGY REGULATORY COMMISSION**

The United States Army Corps of Engineers (Corps) and the Federal Energy Regulatory Commission (FERC), as parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

1. In May 2002, the Corps and the FERC, along with other federal agencies, implemented the "Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission" (Interagency Agreement), to improve the coordination of environmental reviews under the National Environmental Policy Act of 1969, as amended, (NEPA) for proposed interstate natural gas facilities.
2. The objective of this MOU is to supplement the Interagency Agreement to provide for further streamlining by early involvement and cooperation between the Corps and the FERC to identify project purpose, need, and alternatives that can be used by both the Corps and the FERC in carrying out their respective legal responsibilities to satisfy the requirements of the Natural Gas Act (NGA), NEPA, section 404 of the Clean Water Act (CWA, 33 U.S.C. 1344, 33 CFR Parts 320-331 and 40 CFR 230) and section 10 of the Rivers and Harbors Act of 1899 (RHA, 33 U.S.C. 403).
3. The FERC is responsible for authorizing the construction and operation of interstate natural gas pipelines. FERC issues certificates of public convenience and necessity for such pipelines under section 7 of the NGA of 1938, as amended, and authorizes the construction and siting of facilities for the import or export of natural gas (including liquefied natural gas) under NGA section 3. It also authorizes the construction and operation of natural gas pipelines pursuant to the Natural Gas Policy Act. The FERC conducts environmental, safety, and security reviews of LNG plants and related pipeline facilities, and as the Lead Federal agency prepares the overall NEPA documentation, as described in the Interagency Agreement.

4. The Corps is responsible for the administration of laws for the protection and preservation of waters of the United States, including wetlands, pursuant to section 10 of the RHA and section 404 of the CWA. All work and or structures in or affecting the course, condition, location, or capacity of navigable waters of the United States, and artificial islands, installations, or other devices on the Outer Continental Shelf, require Corps authorization under the RHA. The Corps authorizes, under the CWA, the discharge of dredged or fill material into the waters of the United States, including wetlands. Interstate pipelines and LNG projects normally require one or more permits from the Corps under these statutes.

5. As the lead agency under NEPA responsible for the preparation of the analysis and decisions for the approval of new interstate natural gas and LNG facilities, the FERC is responsible for determining the purpose and need of the project for purposes of the FERC NEPA document and of the FERC authorization 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 FERC determines to be appropriate for the project. The FERC shall coordinate early with the Corps to ensure that the purpose and need, and the suite of alternatives and evaluation criteria, presented in the NEPA document are usable by the Corps in carrying out the Corps' legal responsibilities under binding statutes and regulations (e.g., conducting the Corps' public interest review, determining the "least environmentally damaging practicable alternative" under the CWA Section 404(b)(1) Guidelines, and fulfilling other applicable legal requirements). If the Corps cannot concur or conditionally concur with the FERC determinations (e.g., the FERC formulation of project purpose, need, and alternatives), the matter shall be resolved pursuant to the dispute resolution process identified in paragraph 8 of this MOU. The FERC and the Corps will work together and will implement their respective legal authorities to ensure that the proposal, with or without modifications, and the selected alternative will mitigate to the maximum extent practicable, any adverse effects on aquatic resources.

6. To further support this MOU, the signatory agencies shall develop additional guidance to ensure that the Corps' permit documentation is prepared concurrently with the NEPA process to the maximum extent practicable. To further support the NEPA process, when FERC provides preliminary draft FERC NEPA documents, the Corps shall review and provide written comments on the relevant portions of those documents, as appropriate in accordance with the timelines established by FERC under the Interagency Agreement. Preliminary draft FERC NEPA documents include advance copies of the purpose, need, and alternatives sections of the FERC NEPA documents, as well as advance copies of the draft and final NEPA documents. Corps reviews of FERC NEPA documents will be completed and coordinated with the FERC as stated in the FERC EIS schedule for that project which shall be no more than 30 days from receipt of the document.

7. As stated in the Interagency Agreement, the FERC and the Corps agree to



communicate early in the review process, coordinate schedules, share data, identify concerns, coordinate requests for additional information, and cooperate in the development of alternate routes and mitigation measures for interstate natural gas and LNG projects. The FERC will notify the appropriate Corps District and Division offices as early as possible of the pending start of the NEPA review of any major pipeline or LNG facility proposal. The FERC and the Corps will consult early in the process to reach agreement on the scope of the purpose, need, and alternatives analysis that will satisfy the Corps' requirements under Section 10 of the RHA and Section 404 of the CWA, including the 404(b)(1) Guidelines. FERC and the Corps agree that the goal of the process is that the Corps would use the FERC record to the maximum extent practicable and as allowed by law, so that the Corps can satisfy the legal requirements of the RHA and CWA as efficiently and expeditiously as possible.

8. Disputes shall be resolved at the lowest level possible. If a dispute cannot be resolved at the working level, including at the Division offices, either party may elevate the dispute to the level of the Assistant Secretary of the Army (Civil Works) and the Director, Office of Energy Projects of FERC, for resolution. If the dispute cannot be resolved within 45 days after elevating the dispute to the Assistant Secretary of the Army and the Director, Office of Energy Projects of FERC, the issue shall be resolved in accordance with the procedures detailed in the Interagency Agreement.

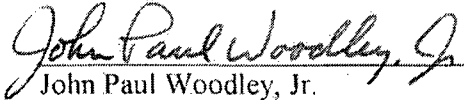
9. This MOU is subject to the requirements of the Interagency Agreement. This MOU supplements, but does not amend or modify the requirements of the Interagency Agreement.

10. Both signatory agencies shall make every effort to ensure continuity of staff representation on a project, as well as participation in meetings and decisions at the appropriate level within their respective agencies.

11. Participation in this MOU does not imply endorsement of a pipeline plan, shore-side facility, or project. Nothing in this MOU is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the signatory agencies. The Corps' participation in this process is not equivalent to serving as a cooperating agency, which is a separate process established through a separate formal written agreement with the FERC.

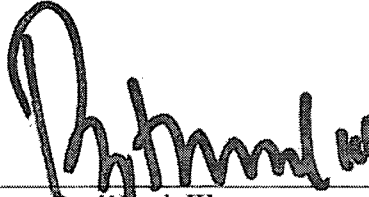
12. This MOU is not a fiscal or funds obligation instrument. Nothing in this MOU will be construed to affect the authorities of the signatory agencies to act as provided by statute or regulation, or to bind the signatory agencies beyond their respective authorities. In addition, nothing in this MOU will be construed to require the signatory agencies to obligate or expend funds in excess of available appropriations.

13. This MOU does not confer any right or benefit, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.



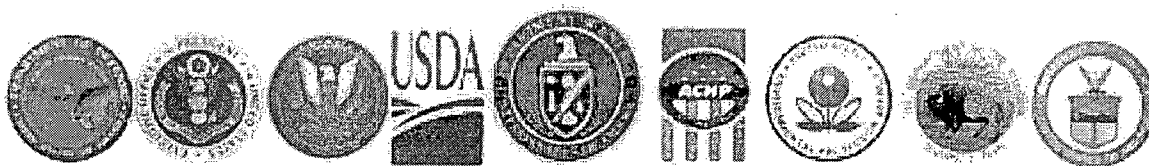
John Paul Woodley, Jr.  
Assistant Secretary  
of the Army (Civil Works)

June 30, 2005  
Date



Pat Wood, III  
Chairman  
Federal Energy Regulatory Commission

6/30/05  
Date



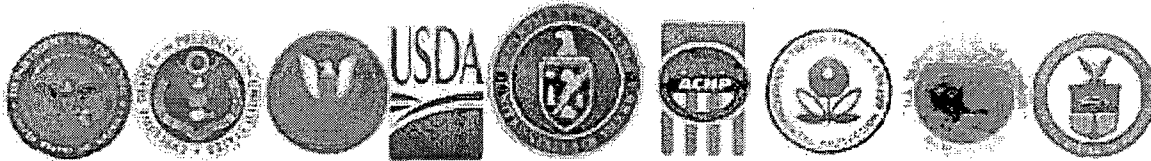
MEMORANDUM OF UNDERSTANDING  
ON EARLY COORDINATION OF FEDERAL AUTHORIZATIONS AND RELATED  
ENVIRONMENTAL REVIEWS REQUIRED IN ORDER TO SITE ELECTRIC TRANSMISSION  
FACILITIES

August 8, 2006

THE DEPARTMENT OF ENERGY  
THE DEPARTMENT OF DEFENSE  
THE DEPARTMENT OF AGRICULTURE  
THE DEPARTMENT OF THE INTERIOR  
THE DEPARTMENT OF COMMERCE  
THE FEDERAL ENERGY REGULATORY COMMISSION  
THE ENVIRONMENTAL PROTECTION AGENCY  
THE COUNCIL on ENVIRONMENTAL QUALITY  
THE ADVISORY COUNCIL on HISTORIC PRESERVATION

**I. PURPOSE**

With the signing of this Memorandum of Understanding (MOU), the Department of Energy (DOE), the Department of Agriculture (USDA), the Department of Defense (DOD), the Department of the Interior (DOI), the Department of Commerce (DOC), the Federal Energy Regulatory Commission (FERC), the Environmental Protection Agency (EPA), the Council on Environmental Quality (CEQ), and the Advisory Council on Historic Preservation (ACHP) (hereinafter collectively referred to as the Participating Agencies) commit to work together to meet each Agency's obligations under the Federal Power Act (FPA), as amended by section 1221(a) of the Energy Policy Act of 2005, 119 Stat. 594, 946-951 (2005) (to be codified as amended at 16 U.S.C. § 824p). Recognizing that the Department of Energy and the Federal Energy Regulatory Commission share the responsibility to facilitate implementation of subsection 216(h) of the FPA with the other Participating Agencies, this MOU has been prepared to establish a framework for early cooperation and participation that will enhance coordination of all applicable land use authorizations, related environmental, cultural, and historic preservation reviews, and any other approvals that may be required under Federal law in order to site an electric transmission facility.



## II. BACKGROUND

The Energy Policy Act of 2005, signed by President Bush on August 8, 2005, declares that it is a national policy to enhance and, to the extent possible, to increase the coordination and communication among Federal agencies with authority to site electric transmission facilities. The policies set forth by Congress in subsection 216(h) of the FPA reinforce previous Administration policies announced by the President in Executive Order 13212 issued on May 18, 2001, by mandating each agency with authority to issue Federal authorizations to ensure the timely and coordinated review and permitting of electric transmission facilities.

The Department of Energy, pursuant to subsection 216(h) of the FPA, is responsible for "coordinating all applicable Federal authorizations and related environmental reviews" as may be required under Federal law in order to site an electric transmission facility. [216(h)(1)-(2)]. "In consultation with agencies responsible for Federal authorizations and, as appropriate, with Indian tribes, multistate entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews," the Secretary of Energy is directed to establish "binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility." [216(h)(4)(A)]. In addition, subsection 216(h) of the FPA directs the Secretary of Energy to establish a pre-application mechanism "for prospective applicants to confer with the agencies involved" prior to submitting a complete application and to prepare a single environmental review document in consultation with the Participating Agencies to be "used as the basis for all decisions on the proposed project under Federal law." [216(h)(4)(C), (5)(A)].

The Office of Electricity Delivery and Energy Reliability, within DOE, grants Presidential permits for the construction, operation, maintenance, and connection of electric transmission facilities at the United States international border pursuant to Executive Order 10485, as amended by Executive Order 12038. The DOE issues permits pursuant to this authority if, after obtaining favorable recommendations from the Secretaries of State and Defense, it determines that the project is in the public interest.

The Federal Energy Regulatory Commission is responsible for processing and acting on applications for permits for the construction or modification of electric transmission facilities in National Interest Electric Transmission Corridors designated by the Secretary of Energy. The Secretary of Energy delegated to FERC the authority to act as the lead agency under subsection 216(h), subject to the restrictions contained in the delegation order, in instances when an applicant or a prospective applicant has submitted an application to FERC for the construction or modification of one or more electric transmission facilities pursuant to subsection 216(b) of the FPA. *See* Department of Energy Delegation Order No. 00-004.00A. For purposes of this MOU, the term "DOE" shall be construed to include FERC, with respect to FERC's exercise of these delegated authorities under subsection 216(h) of the FPA.



The Bureau of Land Management (BLM), within the Department of the Interior, is responsible for managing approximately 260 million acres of public lands. The BLM is responsible for issuing right-of-way grants authorizing electric transmission facilities on these lands. Title V of the Federal Land Policy and Management Act of 1976, as amended, provides the BLM the authority to issue right-of-way grants on the public lands for the generation, transmission, and distribution of electric energy.

The National Park Service (NPS), within DOI, is responsible for managing nearly 84 million acres in 390 units of the National Park System. The NPS mission is to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. In addition to the National Park System, the NPS has some management responsibility over other areas, including the National Wild and Scenic Rivers System, National Trails System, National Heritage Areas, and the NPS Affiliated Areas, which are closely linked in importance and purpose to those areas directly managed by the NPS. The NPS may issue right-of-way permits only if the uses or activities are specifically authorized by Congress. One such authorization, the Act of March 4, 1911, provides the NPS the general authority to issue right-of-way permits on national park lands for electrical poles and lines for the transmission and distribution of electrical power.

The Bureau of Reclamation (BOR), within DOI, is responsible for managing, developing, and protecting water and related resources in an environmentally and economically sound manner in the interest of the public. The BOR may grant rights-of-way for electric transmission facilities and other uses where compatible with reclamation or power project purposes as authorized in Section 10 of the Act of August 4, 1939, as amended.

The Bureau of Indian Affairs (BIA), within DOI, is charged with the administration of Federal Indian policy and the implementation of the Federal trust responsibility for American Indians and American Indian Tribes. The BIA is responsible for, among other things, granting rights-of-way across lands held in trust for American Indians or American Indian Tribes. In addition, the BIA and other Federal agencies must consult with any Tribe that may be affected by a proposed right-of-way, as provided by Executive Order 13175, 65 Fed. Reg. 67,249 (Nov. 9, 2000).

The Fish and Wildlife Service (FWS), within DOI, is responsible for the conservation, protection, and enhancement of fish, wildlife, plants, and their habitats. The FWS has principal trust responsibility to protect and conserve migratory birds, threatened and endangered species, certain marine mammals, and jurisdictional fish. Applicants for electric transmission facility rights-of-way are required to consult with the FWS on projects potentially affecting any of these resources. The FWS manages the National Wildlife Refuge System and authorizes use by permit for lands within this System.

The Minerals Management Service (MMS), within DOI, is responsible for issuing and enforcing regulations to promote safe operations, environmental protection, and resource conservation on the



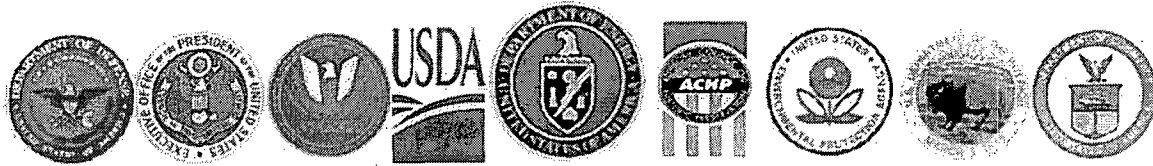
Outer Continental Shelf (OCS). The MMS is responsible for granting leases, easements, or rights-of-way for electric transmission facilities pursuant to section 388 of the Energy Policy Act of 2005, through submerged lands of the OCS.

The Forest Service (USFS), within the Department of Agriculture, is responsible for the management of 193 million acres of National Forest System (NFS) lands. The USFS is responsible for issuing special use authorizations for electric transmission facilities on NFS lands. Title V of the Federal Land Policy and Management Act of 1976, as amended, provides the FS the authority to issue authorizations on NFS lands for the generation, transmission, and distribution of electric energy.

The Department of Defense is responsible for providing the military forces needed to deter war and protect the security of the United States. The major elements of these forces are the Army, Navy, Air Force, and Marine Corps. Under the President, who is also Commander-in-Chief, the Secretary of Defense exercises authority, direction, and control over the Department, which includes the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, three Military Departments, nine Unified Combatant Commands, the DoD Inspector General, 15 Defense Agencies, and seven DoD Field Activities.

The Army Corps of Engineers (USACE), within DoD, is responsible for administering laws for the protection and preservation of waters of the United States, pursuant to the requirements of section 10 of the Rivers and Harbors Act (RHA) of 1899, section 404 of the Clean Water Act (CWA) of 1972, and section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972. Under the RHA, the USACE may authorize work and/or structures in or affecting the course, condition, location, or capacity of navigable waters of the United States. Under the CWA, the USACE may authorize the discharge of dredged or fill material into waters of the United States, including wetlands, where the USACE determines the proposed action is the least environmentally damaging practicable alternative. Under the MPRSA, the USACE may authorize the transportation of dredged material excavated from navigable waters of the United States for the purpose of dumping it in ocean waters. The USACE shall be considered a Participating Agency, where relevant, for purposes of this MOU.

The Environmental Protection Agency is responsible for administering a wide range of environmental laws. The EPA responsibilities relevant to the siting of electric transmission facilities include, but are not limited to, commenting on an Environmental Impact Statement (EIS) under section 309 of the Clean Air Act (CAA), the authority to participate in the section 404 Clean Water Act (CWA) permit process and to restrict in certain circumstances the use of specific disposal sites for dredged or fill material pursuant to section 404 (c) and the authority to issue, and/or review state- and tribe-issued permits under the CAA or for activities that involve discharges of pollutants subject to the requirements of the CWA National Pollutant Discharge Elimination System.



The National Oceanic and Atmospheric Administration (NOAA), within the DOC, is responsible for addressing a variety of impacts to marine and coastal ecosystems as mandated by several statutes and authorities. The siting of electric transmission lines in coastal and/or ocean areas may overlap with several NOAA responsibilities depending on the location and type of project proposed.

The NOAA's National Marine Fisheries Service (NMFS), within DOC, is responsible for activities that include managing protected species, managing commercial and recreational fisheries, and protecting marine and coastal habitats. These activities are conducted pursuant to a number of environmental laws including the Endangered Species Act, Marine Mammal Protection Act, Magnuson-Stevens Fishery Conservation and Management Act, and the Fish and Wildlife Coordination Act. Federal agencies authorizing activities may be required to consult with NMFS regarding adverse effects to these resources and the habitats upon which they depend.

The NOAA's National Ocean Service (NOS), also within DOC, is responsible for various coastal and ocean programs that may be relevant to obtaining federal licenses or permits for the siting of electric transmission lines. The NOS administers the Coastal Zone Management Act (CZMA) and approves, periodically reviews, and provides grants and technical assistance to states for purposes of implementing comprehensive Coastal Management Programs and National Estuarine Research Reserves. The NOS also mediates certain disputes regarding CZMA issues. Under CZMA section 307(c)(3)(A), applicable states must concur with consistency certifications submitted with linear right-of-way applications and any other required applications for federal permits or licenses before Federal agencies can issue their approvals. The NOS also manages designated National Marine Sanctuaries (NMS) and coastal protection and restoration activities. Pursuant to section 304(d) of the National Marine Sanctuaries Act, Federal actions in or near NMS may require consultation with the Secretary of Commerce. The NOS may also be able to provide technical assistance related to nautical charts, coastal observing stations, geographic information system (GIS) capabilities, and tide and current information.

The Council on Environmental Quality was established within the Executive Office of the President in 1969 by act of Congress as part of the National Environmental Policy Act (NEPA). Its principal purpose is to formulate and recommend national policies to promote the improvement of the quality of the environment. The CEQ has issued regulations applicable to Federal agencies implementing NEPA (40 C.F.R. Parts 1500 through 1508).

The Advisory Council on Historic Preservation, an independent Federal agency, was created by Title II of the National Historic Preservation Act of 1966 (NHPA), to advise the President and Congress on historic preservation matters and to administer the review process established by Section 106 of the Act. Under Section 106, Federal agencies are obligated to consider how their actions may affect historic properties included in or eligible for inclusion in the National Register of Historic Places and to afford the ACHP an opportunity to comment. These obligations are met by following the implementing regulations issued by the ACHP, "Protection of Historic Properties" (36 C.F.R. Part 800).

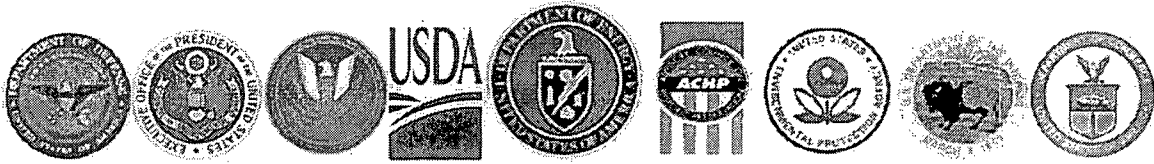


### III. PARTICIPATING AGENCY COMMITMENTS

The Participating Agencies hereby commit, to the extent practicable, to early involvement and cooperation to ensure that timely decisions are made and that the responsibilities of each Participating Agency are met. The Participating Agencies commit to working together and, as appropriate, with Indian tribes, multistate entities, State agencies, and other interested persons in carrying out the provisions of subsection 216(h). In particular, the Participating Agencies agree to:

- A. Communicate and Coordinate Early. Within one week from the date a prospective applicant or an applicant submits a proposal to a Participating Agency that the Participating Agency believes is likely to require a Federal authorization, as that term is defined in FPA subsection 216(h)(1), the Agency will assess its potential role in authorizing the proposed project and initiate contact with DOE and the other affected Participating Agencies if the project is (1) equal to or greater than 230 kV; (2) reasonably likely to require an EIS; or (3) reasonably likely to require more than one Federal authorization. Once notified, DOE will consult with each relevant Participating Agency with a potential role in authorizing the proposed project to determine the appropriate level of coordination required for the proposed project. Those Participating Agencies contacted by DOE agree to cooperate with DOE to:
1. Coordinate their applicable Federal authorizations and environmental reviews relating to a proposed or existing facility. This coordination requires consultation, "as appropriate with Indian tribes, multistate entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews." [216(h)(4)(A)].
  2. Adhere to "intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed [electric transmission] facility" as established by DOE in consultation with the relevant Participating Agencies and in accordance with applicable laws. [216(h)(4)(A)].
  3. Conduct timely reviews of applications for proposed transmission facilities within corridors designated under section 503 of the Federal Land Policy and Management Act (43 U.S.C § 1763 et seq.) by fully taking into account prior analyses and decisions relating to the corridors. [216(h)(5)(B)].
  4. Provide, as appropriate and available, to the applicant or the prospective applicant relevant studies, data (such as maps showing features over which the Agency may have jurisdiction), and any other information concerning the status of matters the Participating Agency considers relevant, including matters that may be under consideration, such as proposing a species for listing as endangered or threatened, or proposing an area for wilderness status.
  5. Identify the applicable statutory, regulatory, and policy responsibilities of that Agency, and communicate that information to the applicant or the prospective applicant.





B. Participate During Application Discussions. Not later than 60 days after receipt of a request for such information by an applicant, a prospective applicant, or DOE, each Participating Agency with a potential role in authorizing the proposed project will coordinate with DOE to provide information concerning:

1. The “key issues of concern to the [Participating] agencies and the public” that need to be addressed in order for that Agency to meet its obligations, and communicate those issues and concerns to the applicant or the prospective applicant. [216(h)(4)(C)(ii)].

2. The likelihood of approval for a potential facility. [216(h)(4)(C)(i)].

C. Communicate Informally. The Participating Agencies and principal contacts set forth in section VIII agree to informally communicate early and throughout the process to ensure that issues are raised as soon as possible and shared among all Agencies. Each Participating Agency will identify one or more lead points of contact for a project if other than the principal contact. This point of contact will notify DOE at least 60 days prior to expiration of an intermediate or final deadline established by DOE pursuant to subsection 216(h)(4)(A) and/or (B).

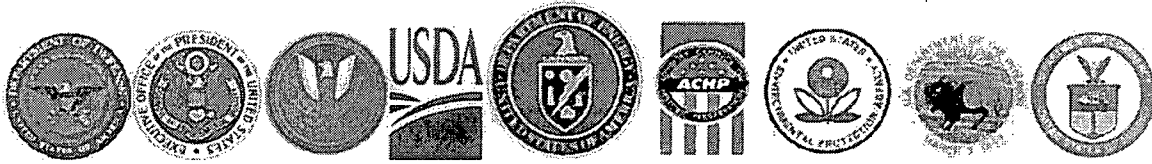
D. Share Information and Data. To the extent permitted by law and regulation, the Participating Agencies will share the information gathered, considered, and relied upon by each of them with all other relevant Participating Agencies. Specifically, the Participating Agencies, if determined to have potential roles in authorizing the proposed project, agree to:

1. Establish, maintain, and utilize, to the extent applicable, a single electronic source to store and display information pertaining to one or more authorizations potentially required to site an electric transmission facility. The FERC’s E-library is an example of one such source.

2. Cooperate and coordinate in the preparation of requests for studies or data, avoid duplicative requests, and compile consistent information on which all of the Participating Agencies will rely.

3. Cooperate in identifying and developing the information at the level of detail required to complete environmental and cultural resource project reviews.

4. Consult early and as often as needed with DOE and other applicable Participating Agencies and, as appropriate, Indian tribes, multistate entities, and State agencies regarding preparation of a single environmental review document to be “used as the basis for all decisions on the proposed [electric transmission] project.” The single environmental review document shall “include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable law.” [216(h)(5)(A), (C)].

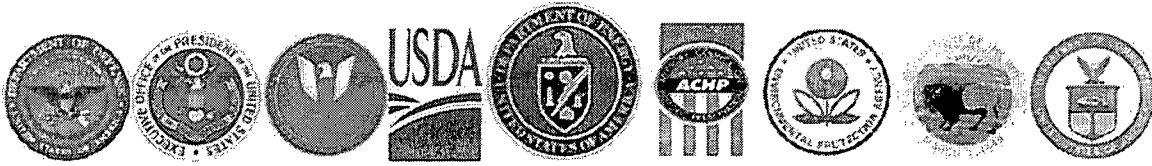


5. Consult early and as often as needed with DOE and other applicable participating Federal and State agencies regarding the sufficiency and data requirements of applications and pre-applications. [216(h)(4)(B)].

6. Notify the principal contact listed in section VIII for the relevant Participating Agencies and CEQ once any Participating Agency learns of an applicant or State's intent to appeal any matter under subsection 216(h)(6).

#### IV. SCOPE OF THE MOU

- A. This MOU cannot be used to obligate or commit funds or as the basis for the transfer of funds. Nothing in this MOU, in and of itself, requires any signatory agency to enter into any contract, grant, or interagency agreement. All provisions in this MOU are subject to the availability of funds.
- B. This MOU shall be modified or amended upon written request of any party hereto and the subsequent written concurrence of all parties.
- C. This MOU is to be construed in a manner consistent with all existing laws.
- D. This MOU neither expands nor is in derogation of those powers and authorities vested in the parties by applicable law.
- E. The Participating Agencies intend to fully carry out the terms of this MOU. All provisions in this MOU, however, are subject to available appropriations and agency resources.
- F. This MOU is strictly for internal management purposes of the parties. It is not a contract for acquisition of supplies or services, is not legally enforceable, and shall not be construed to create any legal obligation on the part of any of the parties, or any private right or cause of action for or by any person or entity.
- G. Participation in this MOU may be terminated 60 days after providing written notice of such termination to the other Participating Agencies. Upon one party's unilateral withdrawal, this MOU shall remain in effect for other Participating Agencies unless all of the Participating Agencies unanimously agree to withdraw.
- H. The Participating Agencies will review this MOU every 5 years from the date the MOU takes effect and revise it as necessary.



## V. DISPUTE RESOLUTION

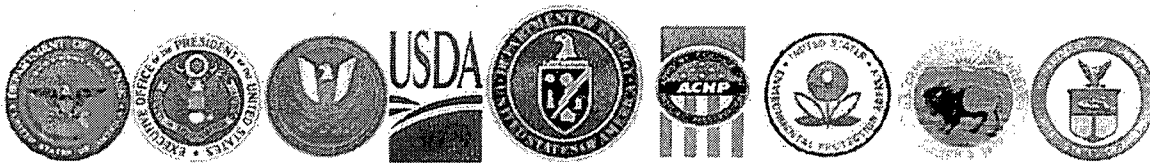
If a dispute arises among the Participating Agencies regarding the terms or the implementation of this MOU, the following steps will be taken:

- A. The Participating Agency (through its principal contact(s) and/or points of contact(s) identified in section III(C) for projects) that seeks resolution will immediately (or within five working days) provide a written statement of the dispute, along with any rationale or supporting documents, to other relevant Participating Agencies and DOE in an attempt to arrive at a consensus and resolve the dispute.
- B. If no resolution is reached within 10 working days of notification of the dispute, it will be elevated in writing, along with any rationale or supporting documents, to the principal contacts set forth in section VIII at the headquarters-level for the relevant Participating Agencies and CEQ.
- C. If resolution is not reached by the headquarters-level officials within 15 working days of their receipt of the written statement of the dispute, the relevant Participating Agencies will promptly elevate the matter to their principal policy makers and the CEQ Chairman who will resolve the matter within 20 working days.
- D. The time limits in the preceding paragraphs may be extended on the mutual agreement of the Participating Agencies that the period should be extended. Disputes will be resolved within sufficient time to enable completion of any environmental reviews by the deadlines established by DOE in consultation with the relevant Participating Agencies.

## VI. SECURITY AND CLASSIFICATION

All applicable security classifications and guidelines shall apply. Before any classified work under this MOU is initiated, the Participating Agencies' representatives will establish appropriate security requirements/procedures.

All work undertaken pursuant to this MOU shall be coordinated among the Participating Agencies, and, when applicable, shall be subject to confidentiality requirements and exemptions from disclosure under the Freedom of Information Act, 5 U.S.C. § 552.



**VII. AUTHORITIES**

The Participating Agencies enter into this MOU under subsection 216(h) of the Federal Power Act, sec. 1221(a), § 216(h)(7)(B)(i), 119 Stat. 594, 946-951 (2005) (to be codified as amended at 16 U.S.C. § 824p).

**VIII. PRINCIPAL CONTACTS**

Each party hereby designates contacts as the initial principal contacts for the agency. [216(h)(7)(C)]. These contacts may be changed at the Participating Agency's discretion upon written notice to the other Participating Agencies. The following are the initial principal contacts for each agency:

- DOE: Director of the Office of Electricity Delivery and Energy Reliability
- FERC: Director of the Office of Energy Projects
- DOC/NOAA: Assistant Secretary of Commerce, Oceans and Atmosphere
- DOC/NOAA/NMFS: Assistant Administrator, National Marine Fisheries Service
- DOC/NOAA/NOS: Assistant Administrator, National Ocean Service
- DOD: Director, Installations Requirements and Management
- DOD/USACE: Assistant Secretary of the Army for Civil Works
- EPA: Director of the Office of Federal Activities
- DOI: Principal Deputy Assistant Secretary, Land and Minerals Management
- CEQ: Associate Director for NEPA
- USDA/FS: Assistant Director of Lands, Forest Service
- ACHP: Director of the Office of Federal Agency Programs

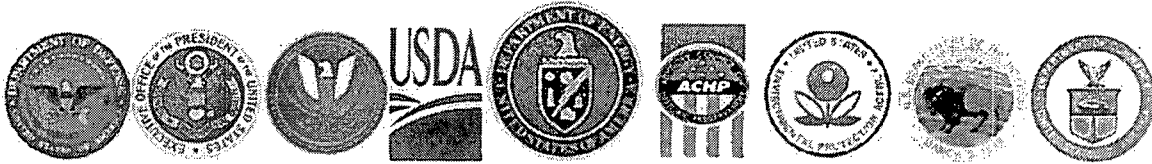
**IX. DATE EFFECTIVE**

This MOU shall take effect on the date of the last approving signature specified in section X.

**X. SIGNATORIES**

By: Samuel W. Bodman  
 SAMUEL W. BODMAN  
 SECRETARY OF ENERGY

Date: 7 Aug 06

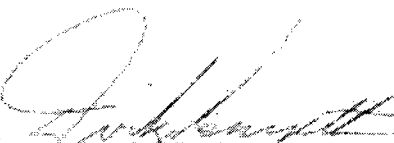


By:   
KENNETH J. KRIEG  
UNDER SECRETARY OF DEFENSE  
ACQUISITION, TECHNOLOGY & LOGISTICS


Date: 8/4/06

By:   
MIKE JOHANNIS  
SECRETARY OF AGRICULTURE

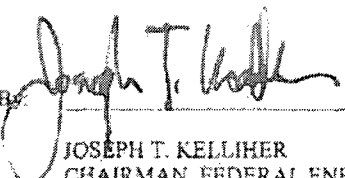
Date: AUG 3 2006

By:   
DIRK KEMPTHORNE  
SECRETARY OF THE INTERIOR

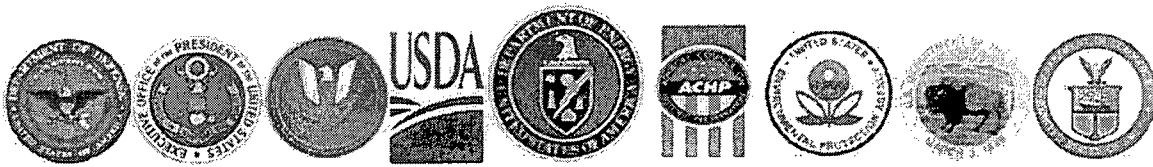
Date: AUG 04 2006

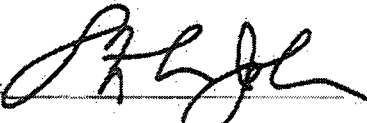
By:   
CARLOS M. GUTIERREZ  
SECRETARY OF COMMERCE

Date: 8/8/06

By:   
JOSEPH T. KELLIHER  
CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION

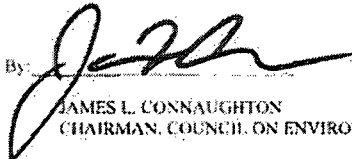
Date: 7/17/06



By: 

Date: JUL 18 2006

STEPHEN L. JOHNSON  
ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

By: 

Date: 7/21/06

JAMES L. CONNAUGHTON  
CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

By: 

Date: July 14, 2006

JOHN L. NAU III  
CHAIRMAN, ADVISORY COUNCIL ON HISTORIC PRESERVATION

appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the letter from K. Goller to G. Rhode dated June 13, 1975 and the letter from G. Rhode to K. Goller dated July 2, 1975, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oswego City Library, 120 E. Second Street, Oswego, New York 13126. The proposed license amendment and the Safety Evaluation, may be inspected at the above locations and a copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 15th day of August 1975.

For the Nuclear Regulatory Commission.

GEORGE LEAR,  
Chief, Operating Reactors  
Branch No. 3, Division of Re-  
actor Licensing.

[FR Doc.75-22243 Filed 8-22-75; 8:45 am]

[Docket No. 50-312]

**SACRAMENTO MUNICIPAL UTILITY  
DISTRICT (RANCHO SECO)**

**Proposed Issuance of Amendment to  
Facility Operating License**

The Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DFR-54 issued to Sacramento Municipal Utility District (the licensee) for operation of the Rancho Seco Nuclear Generating Station Unit 1 (the facility), a pressurized-water reactor located in Sacramento County, California, and currently authorized for operation at power levels up to 2568MWt.

In accordance with the licensee's application for a license amendment dated July 8, 1975, the amendment would modify operating limits in the Technical Specifications based upon an evaluation of ECCS performance calculated in accordance with an acceptable evaluation model that conforms to the requirements of the Commission's regulations in 10 CFR Section 50.46. The amendment would modify various limits established in accordance with the Commission's Interim Acceptance Criteria, and would, with respect to the Rancho Seco Nuclear Generating Station Unit 1, terminate the further restrictions imposed by the Commission's December 27, 1974 Order for Modification of License, and would impose instead, limitations established in accordance with the Commission's Acceptance Criteria for Emergency Core Cooling Systems for Light Water Nuclear Power Reactors, 10 CFR Section 50.46.

In addition, the Commission is considering the issuance of a license amendment which would revise the provisions in the Technical Specifications to reduce surveillance requirements for reactor building tendons as necessitated by equipment capability limitations, in accordance with the licensee's application for amendment dated May 23, 1975.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By September 24, 1975, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER Notice and Section 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to David S. Kaplan, Secretary and General Counsel, 6201 S Street, Post Office Box 15830, Sacramento, California, the attorney for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see (1) the application for

amendment dated July 8, 1975, and (2) the Commission's Order for Modification of License and the documents referred to in the Order dated December 27, 1974 published in the FEDERAL REGISTER on January 9, 1975 (40 FR 1776), which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Business and Municipal Department, Sacramento City-County Library, 828 I Street, Sacramento, California. The license amendment and the Safety Evaluation, when issued, may be inspected at the above locations, and a copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 15th day of August 1975.

For the Nuclear Regulatory Commission.

ROBERT W. REID,  
Chief, Operating Reactors  
Branch No. 4, Division of Re-  
actor Licensing.

[FR Doc.75-22244 Filed 8-22-75; 8:45 am]

**REGULATION OF NUCLEAR POWER  
PLANTS**

**Memorandum of Understanding**

Both the Corps of Engineers, United States Army, and the United States Nuclear Regulatory Commission have responsibilities for assuring that nuclear power plants on coastal and inland navigable waters and at offshore sites are built and operated safely and with minimum impact on the environment. For the purpose of coordinating and implementing consistent and comprehensive requirements to assure effective, efficient and thorough regulation of nuclear power plants and to avoid conflicting and unnecessary duplication of effort and of standards related to overall public health and safety and environmental protection, the Corps of Engineers, United States Army, and the United States Nuclear Regulatory Commission have entered into a memorandum of understanding. The text of the memorandum is set forth below.

Dated at Washington, D.C., this 18th day of August 1975.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,  
Secretary of the Commission.

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CORPS OF ENGINEERS, UNITED STATES  
ARMY, AND THE UNITED STATES NUCLEAR  
REGULATORY COMMISSION FOR REGULATION  
OF NUCLEAR POWER PLANTS**

1. Purpose. a. For the purpose of coordinating and implementing consistent and comprehensive requirements to assure effective, efficient and thorough regulation of nuclear power plants and to avoid conflicting and unnecessary duplication of effort and of standards related to overall public health and safety and environmental protection, the Corps of Engineers, United States Army (US Army CE) and the United States Nuclear

Regulatory Commission (U.S.N.R.C.) have entered into this Memorandum of Understanding—subject to their respective statutory authorities. The agreement pertains to nuclear power electric generating stations using nuclear steam supply systems, including their appurtenant structures, located in or affecting navigable waters. In the case of a floating nuclear power plant, such structures include the electrical transmission lines from the plant to a landbased substation, the protective breakwater and mooring systems, and all appurtenant supporting facilities.

b. Nothing in this Memorandum of Understanding is to be interpreted as contravening the terms of the existing Memorandum of Understanding between the Atomic Energy Commission and the Department of Defense dated 14/16 Feb 1967, pursuant to Section 91b of the Atomic Energy Act of 1954, as amended.

2. *Statutory Background.* a. *The Corps of Engineers, United States Army (US Army CE).* Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Secretary of the Army, acting through the US Army CE exercises regulatory authority over the construction of any structures in navigable waters of the United States, the dredging and/or filling of any navigable waters of the United States, and any other activity which would alter or modify the course, condition, location or capacity of a navigable water of the United States. This responsibility encompasses onshore as well as offshore activities when such activities affect the course, condition or capacity of a navigable water of the United States. Navigable waters of the United States have been administratively defined by the US Army CE (33 C.F.R. 209.260) to generally include those waters, including the territorial seas, which are subject to the ebb and flow of the tide or which have been used, are used, or are susceptible of use as an instrument to transport interstate commerce.

The Outer Continental Shelf Lands Act (43 U.S.C. 1333(f)) extends the authority of the Secretary of the Army, acting through the US Army CE, to the prevention of obstruction to navigation in the navigable waters of the United States due to the construction of artificial islands and fixed structures on the outer continental shelf beyond the territorial sea.

Pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344), the Secretary of the Army, acting through the US Army CE, exercises regulatory authority over the discharge of dredged or fill material in navigable waters at specified disposal sites. The selection of disposal sites will be in accordance with guidelines developed by the Administrator of the United States Environmental Protection Agency in conjunction with the Secretary of the Army. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishing areas, wildlife or recreation areas.

Under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.), the Secretary of the Army, acting through the US Army CE, is authorized to issue permits for the transportation of dredged material from the United States for the purpose of dumping into ocean waters. However, as "dumping" is defined by Section 3(f) of that Act, it does not include the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on/ or in the submerged land beneath such waters, for a purpose other than disposal when such con-

struction or such placement is otherwise regulated by Federal law.

Where significant impacts on the quality of the human environment are expected to result from activities covered by an application for a permit under the above statutory provisions, the US Army CE must prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., before the Secretary of the Army, acting through the US Army CE, may issue the permit.

b. *The United States Nuclear Regulatory Commission (U.S.N.R.C.).* The Energy Reorganization Act of 1974 (Pub. Law 93-438 (88 Stat. 1233)) abolished the Atomic Energy Commission, and Section 201 of that Act created the Nuclear Regulatory Commission and transferred to the U.S.N.R.C. all the licensing and related regulatory functions of the Atomic Energy Commission. Pursuant to the Energy Reorganization Act of 1974; Chapters 6, 7, 8, 10, and 16 of the Atomic Energy Act of 1974, as amended, 42 U.S.C. 2011 et seq.; and the rules and regulations issued pursuant thereto, the U.S.N.R.C. is authorized to license and regulate the construction and operation of, among other things, nuclear power plants, from the standpoint of the common defense and security and public health and safety. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., the U.S.N.R.C. is required to prepare an environmental impact statement on, and consider in its licensing actions, the effects on the quality of the human environment caused by the construction and operation of such plants.

3. *Agency Responsibilities.* a. *General Arrangements.* The U.S.N.R.C. will serve as "Lead Agency," exercising the primary responsibility in conducting environmental reviews and in preparing environmental statements for nuclear power plants covered by this Memorandum of Understanding. Except as otherwise indicated, all written communications of US Army CE to and from a license applicant or licensee relating to environmental analyses and reports will be transmitted through the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee. In particular, any actions requiring partial or complete shutdown of the nuclear power plant or changes from the design and operating limitations and conditions approved within the terms of this Memorandum of Understanding will be transmitted through the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee.

Except with respect to any actions requiring partial or complete shutdown of a nuclear power plant or changes from the design and operating conditions approved by either agency, each agency will separately enforce its pertinent regulations or orders and the conditions of the permits and licenses which it issues. Enforcement, as used in this Memorandum of Understanding, means the discovery of a violation of law of the conditions of a permit or license, the issuance of a notice of violation, and subsequent actions for the imposition of sanctions.

To the extent practicable, each agency will consult fully with the other with respect to enforcement actions concerning matters which affect the responsibilities of the other agency as described in this Memorandum of Understanding. Copies of correspondence and other documents relating to such enforcement action will be furnished to the other agency on a timely basis.

The U.S.N.R.C. and the U.S. Army CE will exercise the functions described in this agreement so as to avoid duplication of regulation to the maximum extent consistent with their

respective statutory obligations, public health and safety, and environmental protection.

The U.S. Army CE, acting through the appropriate District Engineer, with the assistance of U.S. Army Corps of Engineers research and development centers, when such assistance is appropriate, will participate with the U.S.N.R.C. in the preparation of the environmental impact statements to include the drafting of material for the sections which consider and evaluate the following topics, as applicable, and the analysis leading thereto.

- (1) Coastal erosion and other shoreline modifications, shoaling, and scouring;
- (2) Siltation and sedimentation processes;
- (3) Dredging activities and disposal of dredged materials; and
- (4) Location of structures in or affecting navigable waters.

The applicant will comply with U.S. Army CE regulations in developing information needed for U.S. Army CE review. As do U.S.N.R.C. regulations, these regulations require the applicant to submit, at his expense, information required in support of his application. Once such information is received, the following procedure will apply to independent analysis of information received in any of these four areas. (An independent analysis is one requiring effort in addition to the analysis done by the U.S.N.R.C. and the U.S. Army CE staff.)

(1) U.S.N.R.C. will provide funding for such an independent analysis if U.S.N.R.C. agrees the independent analysis is needed and would normally be required by U.S.N.R.C. if U.S. Army CE were not involved.

(2) U.S. Army CE will require that the applicant pay contract or other costs of such analysis, as required in U.S. Army CE regulations, if U.S. Army CE determines that the independent analysis is needed, but U.S.N.R.C. does not agree that it is needed or does not agree that such analysis would be required under the regulatory procedures of U.S.N.R.C. In these cases, the contracting and collection of associated costs from the applicant will be the responsibility of the U.S. Army CE. The U.S.N.R.C. will be furnished copies of the results of the study.

In addition, the U.S. Army CE will review and comment on the draft environmental statement in other areas within its regulatory jurisdiction and areas in which the U.S. Army CE has special expertise, as required by NEPA.

b. *Inspections.* Within the scope of this Memorandum of Understanding, the U.S.N.R.C. and the US Army CE will exercise responsibilities for the same activities with respect to inspections as they exercise with respect to environmental reviews as discussed in 3.a. above.

c. *Public Hearings.* The U.S.N.R.C. will conduct a mandatory adjudicatory public hearing with the opportunity for public participation before an Atomic Safety and Licensing Board covering all environmental and radiological health and safety matters relating to the proposed issuance of a U.S.N.R.C. permit for construction of a nuclear power plant. When U.S.N.R.C. proposes to issue a limited work authorization for a nuclear power plant prior to issuance of a construction permit, a public hearing on site suitability and environmental issues will be held pursuant to the applicable U.S.N.R.C. regulations. An adjudicatory hearing will be also conducted prior to issuance of a U.S.N.R.C. license for operation of the nuclear power plant upon request of any person whose interest may be affected or if the U.S.N.R.C., on its own initiative, decides that such a hearing should be held.

The US Army CE, in connection with its statutory and regulatory requirements, will conduct public hearings when required (nor-



mally, when the US Army CE permit involves disposal of dredged or fill material).

On request, each agency will participate in any public hearings held by the other agency. Particularly, in the case of the U.S.N.R.C. hearings, the US Army CE will provide expert testimony, as required, in those areas (sections) covered in the U.S.N.R.C. Environmental Statements in whose preparation the US Army CE participated and those areas of special US Army CE expertise.

4. *U.S.N.R.C. Permits and Licenses and US Army CE Department of the Army Permits.* A U.S.N.R.C. permit to construct a nuclear power plant must be obtained prior to any commencement of any construction at the proposed site.<sup>1</sup> For certain nuclear power reactors, such as the floating nuclear power plants, such a construction permit will not be issued before the U.S.N.R.C. has issued a license to manufacture these reactors. The U.S.N.R.C. will prepare an environmental statement before such a construction permit is issued, discussing the environmental effects of construction and operation of the nuclear power plant at the proposed site; and the U.S.N.R.C. will also evaluate compliance with U.S.N.R.C. criteria for safe design, construction and operation of the nuclear plant including, if applicable, a plant manufactured pursuant to a manufacturing license. US Army CE will participate in the preparation of this environmental statement as described in Section 3, above. This construction permit will be issued on the basis of, among other things, the design and other information presented by the applicant in accordance with requirements of Title 10, Code of Federal Regulations, Chapter I.

It is anticipated that the single US Army CE Department of the Army permit, which authorizes all construction activities to be performed at the plant site, and the U.S.N.R.C. construction permit (or limited work authorization, as applicable) will be issued approximately concurrently for power reactors for which both agencies are authorized to issue permits. Each agency will promptly notify the other in writing of its issuance of a permit. If the U.S.N.R.C. issues a limited work authorization or grants a construction exemption in a situation where a US Army CE permit is also required, the U.S.N.R.C. will promptly notify the US Army CE in writing of the issuance of such an authorization or exemption. When the U.S.N.R.C. decides that it will grant a limited work authorization prior to issuance of a construction permit, the U.S.N.R.C. will advise the US Army CE of this decision. Both agencies will then coordinate their schedules of review and issuances of licenses and permits.

Prior to these issuances, each agency will send to the other a letter commenting on the proposed issuance from the point of view of the reviews assigned to the sending agency in Section 3 above and stating its intention to approve or disapprove issuance of its own permit.

Each agency will caution the applicant that issuance of its permit does not alleviate the need for permits and licenses of other agencies.

Following the above agency actions, and after any requisite public hearings have been held, a facility operating license may be issued by the U.S.N.R.C. pursuant to 42 U.S.C. 2133, 2134, 2232, and 2235.

5. *Procedures. a. Correspondence.* The following documents, relating to US Army CE responsibilities as described in Section 3 of this Memorandum, will be promptly transmitted to the proper recipients by the U.S.N.R.C. Director of Nuclear Reactor Regulation, issuances of licenses pursuant to ap-

pllicable statutes and regulations, and in accordance with the provisions of this memorandum, correspondence to license applicants or licensees pertaining to licensing and cessation or his designee: official U.S.N.R.C. notices to license applicants or licensees affected by the provisions of this Memorandum, and correspondence relating to inspection actions. The U.S.N.R.C. will promptly forward to the US Army CE copies of correspondence with the applicant and other documents which affect the responsibilities of the US Army CE under the provision of this Memorandum.

b. *Public Information.* All correspondence to or from either agency dealing with matters which are the subject of this Memorandum of Understanding will be subject to the Freedom of Information Act. In addition, all correspondence flowing through the U.S.N.R.C. will be subject to § 2.790 of 10 CFR Part 2, which provides for routine disclosure of certain documents in public document rooms. Each agency will consult with the other agency before issuing any press releases on matters assigned to the other agency within this Memorandum of Understanding.

c. *Coordination of Reviews.* In routine matters relating to review of license applications, the appropriate U.S. Army Corps of Engineers District Engineer will be the contact point with the U.S. Army CE; and the designated Environmental Project Manager, Division of Reactor Licensing, will be the contact point within the U.S.N.R.C. Any questions which cannot be resolved at this level will be referred to intermediate levels of management within the U.S. Army and the U.S.N.R.C. If any questions cannot be resolved at these levels, they will be considered in direct communications between the Executive Director for Operations, U.S.N.R.C., and the Chief of Engineers, United States Army.

d. *Coordination of Inspections.* In matters of field inspections, the cognizant Directors of U.S.N.R.C. Regional Inspection and Enforcement Offices and the cognizant District Engineer will be the contact points for routine matters. Any questions which cannot be resolved at this level will be referred to intermediate levels of management within U.S. Army CE and U.S.N.R.C. Any questions that cannot be resolved at these levels will be referred to the Chief of Engineers, United States Army, and the Executive Director for Operations, U.S.N.R.C.

e. *Schedules of Reviews and Inspections.* In order to coordinate inspection and review activities and to efficiently implement regulatory requirements, each agency will advise the other of its schedules for accomplishing inspections and environmental reviews which have an effect on the activities of the other agency as defined in Section 3.a. of this Memorandum of Understanding. Where applicable, these schedules will be incorporated into the U.S.N.R.C. licensing project schedule. Representatives of each agency will be invited to coordination meetings held by the other agency pertaining to environmental review activities which are to be coordinated. Each agency will give priority to keeping the agreed schedules for environmental reviews and will keep the other agency advised of problems which are jeopardizing schedules.

1. *Amendment of Assignments.* The assignment of responsibilities of this Memorandum may be amended by exchange of letters between the Executive Director for Operations, U.S.N.R.C., and the Chief of Engineers, United States Army.

6. *Other Laws and Matters.* Nothing in this Memorandum of Understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor the application or en-

forcement of such laws to matters other than those specified herein, nor shall anything in this Memorandum be construed as modifying the existing authority of either agency.

Dated: July 2, 1975.

LEE V. GOSSICK,  
Executive Director for Operations,  
Nuclear Regulatory Commission.

Dated: July 3, 1975.

W. C. GRIBBLE, Jr.,  
Chief of Engineers of  
US Army CE.

[FR Doc.75-22245 Filed 8-22-75;8:45 am]

## SECURITIES AND EXCHANGE COMMISSION

[70-5721]

### ALABAMA POWER CO.

#### Notice of Proposed Issue and Sale of First Mortgage Bonds at Competitive Bidding

NOTICE IS HEREBY GIVEN that Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary company of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Alabama proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, up to \$35,000,000 principal amount of its First Mortgage Bonds, —% Series due October 1, —, have a term of not less than 5 years nor more than 30 years. Alabama will decide on the term of the new bonds and notify prospective bidders thereof not less than 72 hours prior to the time of the bidding. The interest rate (which shall be a multiple of 1/8%) and the price, exclusive of accrued interest, to be paid to Alabama (which shall be not less than 99% nor more than 102 3/4% of the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under an Indenture dated as of January 1, 1942, between Alabama and Chemical Bank, as Trustee, as heretofore supplemented and as to be further supplemented by a Supplemental Indenture to be dated as of October 1, 1975, which includes a prohibition until October 1, 1980 against refunding the bonds with the proceeds of funds borrowed at a lower effective interest cost.

Alabama proposes to use the proceeds from the sale of the bonds together with:

(1) cash contributions to capital of \$67,000,000 by the Southern Company during 1975 heretofore authorized by the Commission (HCAR No. 18924 (April 9, 1975)), (2) funds provided from bond issues of public authorities for financing certain of Alabama's pollution control facilities, (3) funds provided from the sale and leaseback of properties, (4)

<sup>1</sup> Some activities may be conducted under a limited work authorization.

Mr. Luis Reyes  
Executive Director of Operations  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Mail Stop O-16-E-15

**FIRST CLASS**