

October 11, 2005

FILED ELECTRONICALLY

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

**RE: Comments on Scoping Document 1 and Scoping Meetings;
Chugach Electric Association, Inc.'s
Cooper Lake Hydroelectric Facility, FERC Project No. 2170-029**

Dear Secretary Salas:

Pursuant to the Commission's Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments, dated July 28, 2005, Chugach Electric Association, Inc. (Chugach) hereby submits responsive comments on Commission's Scoping Document 1, dated July 2005, and potential issues identified by Commission Staff during public hearing in Anchorage, Alaska on September 8, 2005. The Scoping Document 1 and public hearings are part of the Commission's review of Chugach's Application for New License for its Cooper Lake Hydroelectric Project (FERC Project No. 2170) (Project), filed April 22, 2005, and a comprehensive Relicensing Settlement Agreement (Settlement Agreement) filed with the Commission on August 30, 2005.

Chugach's comments respond to the following issues:

- (1) Potential enlargement of the Project Boundary to include winter use recreation parking lot and Snug Harbor Road;
- (2) Timing of permitting should the commission remove the transmission line from the license Project Boundary; and
- (3) Clarification of intent with respect to proposed studies during a new license.

Please note that the following comments have been reviewed by the parties to the Settlement Agreement and revised according their comments and suggested revisions.

Preliminary Statement

The Settlement Agreement filed with the Commission on August 30, 2005 reflects a carefully constructed and balanced agreement among a diverse set of parties with different interests. The Settlement Agreement is the culmination of years of consultation and challenging negotiations on a relicensing that, just a few years ago, did not appear to offer much opportunity for the parties to find any common ground whatsoever, much less a comprehensive settlement of all issues. All the parties to the Settlement, therefore, are very interested in preserving the agreement that was reached in order to implement a set of measures carefully designed to accommodate each party's interests without unduly compromising the interests of another party. On behalf of all the parties to the Settlement Agreement, Chugach respectfully requests that the Commission refrain from issuing a license which would upset the careful balance achieved in the Settlement Agreement, threaten the good working relationships amongst the settling parties, and most likely lead to litigation. It is in the effort to preserve that balance of interests that Chugach submits these comments to make the Commission aware of important interests that appear threatened by comments and issues raised by Commission Staff during the recent scoping meeting.

Enlargement of the Project Boundary to Include Winter Use Recreation Parking Lot and Snug Harbor Road

The Settlement Agreement reflects the parties' intent to be very clear about what terms and conditions should be within the license and those considerations given to achieve settlement that do not belong within the license. Among the carefully constructed settlement provisions, none is more complicated than the delineation of the Project Boundary with respect to the roads used by both the public for recreation and other uses unrelated to the Project and Chugach for operation of the Project.

Snug Harbor Road is a Forest Service Road that currently lies on State of Alaska lands, subject to federal reservations, which contemplate non-exclusive use by Chugach for maintenance and operation of the Project. The Forest Service contributed funds with Chugach to build the road, in recognition that the road would be used by the public for access to National Forest trails and backcountry beyond Cooper Lake. Over time, Chugach and the Forest Service have shared the maintenance responsibility of the road on a seasonal basis in recognition of the shared use of the road. Under authority of the Alaska Statehood Act (PL 85-508), the State of Alaska selected the land underlying Snug Harbor Road for transfer to the State. The transfers were made through a series of land conveyances and patents from 1978 to 1996.

As a result of this history, the State of Alaska, the U.S. Forest Service, and Chugach share financial and maintenance responsibility for Snug Harbor Road. The U.S. Forest

Service and the State of Alaska appear to hold different interpretations related to legal rights over the road itself creating layered and ambiguous authority and management. The U.S. Forest Service anticipates that, when it obtains the necessary funding, the road may be upgraded at some point in the next several years so that it may be proposed as a public road and transferred to a public road agency if accepted by the Kenai Peninsula Borough or the State of Alaska, Department of Transportation and public Facilities.

With these complications, future intentions, and legal uncertainties in mind, the parties have agreed to share the maintenance of Snug Harbor Road to enable Chugach and the public to continue to use the road. In order to reach this understanding, the parties agreed that the Snug Harbor Road is not properly within the Project Boundary for purposes of a FERC license. *See* Section 5.2.1 of the Settlement. Under the current arrangements, Chugach's member-ratepayers pay for maintenance of Snug Harbor Road in rough proportion to Chugach's use of the road. If the road were to be included in the Project Boundary, Chugach member-ratepayers would bear a disproportionate share of the maintenance costs, and inclusion would likely preclude, or at a minimum unduly complicate, a potential transfer to State or Borough control as a public road.

Similarly, the proposed winter-use parking lot described in Section 5.4 of the Settlement would be built on State of Alaska lands not currently within the Project Boundary. The need for a winter-use parking lot is not driven by the Project or public access to the lands solely within the Project Boundary. Rather, the need for the winter-use parking lot is for the public to access a much larger area of federal and state lands that includes the Project. Furthermore, the winter use parking lot is in no way used and useful or necessary to operation of the Project. Rather, Chugach's commitment to fund the construction of the winter-use parking lot on State land adjacent to the non-Project Snug Harbor Road is just part of the consideration made in the context of a comprehensive settlement to help meet the interests of all of the parties. No party to the Settlement believes that enforcement of the commitments set forth in Section 5.4 (or 5.2) requires FERC licensing authority through inclusion of these lands with the Project Boundary.

Finally, as stated very clearly in the public meeting on September 8, 2005, the State of Alaska feels quite strongly that these lands -- that were recently patented to the State under ANILCA -- should not be returned to exclusive federal authority under a FERC license. Such an action by the Commission could cause the State to withdraw its commitment to the Settlement.

Consequently, on behalf of all the parties to the Settlement Agreement, Chugach respectfully requests that the Commission respect the carefully crafted delineation of the Project Boundary set forth in Section 5 of the Settlement Agreement as it relates to the Snug Harbor Road and the winter use parking lot.

Timing of Permitting Should the Commission Remove the Transmission Line From the License Project Boundary

Chugach and the parties to the Settlement have acknowledged that the Commission may decide that the 90.4-mile transmission line between the Quartz Creek and the Anchorage substations no longer meets the requirements of a primary transmission line for purposes of Commission jurisdiction and should no longer be within the Project Boundary. *See* Proposed Article 408(d) in Appendix A to the Settlement Agreement. If that happens, the parties acknowledge that Chugach will have to obtain a number of permits and other approvals from federal, state, municipal and private land owners that it does not currently possess for the land the transmission line corridor occupies.

It was suggested at the public meeting on September 8, 2005 that Chugach could pursue such permits before the Commission actually decides to remove the transmission line corridor from the license. Chugach believes that such a course of action would be premature. First, no licensee should ever presume the outcome of a Commission order. Second, until the Commission rules, Chugach may not even have the legal right or ability to seek the necessary permits. Third, the acquisition of the necessary permits and other approvals is expected to be a complex undertaking that will be complicated even further by presuming an outcome at an uncertain point in the future. Consequently, Chugach will wait for the Commission to issue an order before acting accordingly.

Clarification of Intent with Respect to Proposed Studies During a New License

In Scoping Document 1 and at the Public Meetings in early September, Commission Staff asked a number of questions about the intent and parameters of the studies suggested in Section 4.4 of the Settlement and proposed Article 405. Furthermore, the Commission Staff stated that it was unlikely that the Commission would require only that Chugach fund such studies and invited the parties to outline the study objectives and coordination process related to the studies.

The parties have chosen not to attempt to amend the Settlement Agreement. The parties remain committed to the provisions in Section 4.4, including the funding limitations outlined in that section of the Settlement Agreement and Article 405 as written. In order to maintain these settlement commitments to funding levels and shared responsibilities, the parties anticipate that the studies will actually be conducted by the agencies themselves or other professionals while Chugach will fund the efforts in the amounts specified in the Settlement Agreement. Nonetheless, in order to provide the Commission and the Commission Staff with additional information to consider during the processing of the license application and limit the potential changes to the intent of the parties to the Settlement Agreement, Chugach and the other parties to the Settlement have started discussions that may lead to a suggested substitute Article 405. At this time, the parties

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are reviewing drafts and engaging their technical experts to attempt to provide the Commission with appropriate study objectives and a proposed coordination process related to the studies. We are mindful of the Commission's need to start processing the application, so the parties are committed to trying to submit this information as soon as possible, but no later than November 11, 2005.

Conclusion

On behalf of the other parties to the Settlement Agreement and itself, Chugach respectfully requests that the Commission recognize the balanced commitments in the Settlement Agreement and issue a license with a Project Boundary that is consistent with the Settlement Agreement and proposed license articles, and consider the proposed Article 405 as set forth in this letter.

Very truly yours,



Burke Wick, PE
Plant Manger, Peaking & Hydro Plants

cc: Official Service List
Master Service List (which consists of Official Service List, Settlement Party Representatives, and Wholesale Customers)

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Certificate of Service

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

DATES at Anchorage, Alaska, this 11th day of October, 2005.



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