

**NEGOTIATIONS PROTOCOL
FOR THE COOPER LAKE PROJECT
RELICENSING PROCEEDING (FERC Project No. 2170)**

The Licensee, Chugach Electric Association, Inc., and the Parties in the Federal Energy Regulatory Commission (“Commission” or “FERC”) traditional licensing process for the Cooper Lake Project No. 2170 (“Project”), hereby agree to the following Protocol:

PURPOSE: It is the purpose of this Protocol to guide and govern the process of deliberating and decision-making among the Parties and Participants (as defined herein) in the Cooper Lake Project relicensing negotiations. This Protocol memorializes the process and procedures that will be utilized by the Parties and Participants in discussions that could potentially lead to a negotiated settlement of the license terms and conditions to be presented to the Commission, as well as other non-license commitments among some or all of the Parties.

GOAL: It is the goal of this Protocol to encourage the creation of a negotiated settlement agreement among as many of the Parties and Participants as possible that satisfy all legal requirements and resolve as many of the issues as possible in the Project relicensing.

DEADLINES: The Parties and Participants recognize that FERC will begin processing the Final License Application immediately upon its filing, which will occur no later than April 30, 2005. Parties and Participants will establish benchmarks and accompanying deadlines in the negotiations process and adhere to them to the greatest extent practicable with the goal of developing an Agreement in Principle for submittal to FERC concurrently with the Final License Application. The target for submittal of the Settlement Agreement to FERC is August 31, 2005, to enable FERC to use the Settlement Agreement as the “preferred alternative” in its NEPA analysis.

DATE: For identification purposes, this Protocol is dated September 30, 2004.

A. DEFINITIONS

1. (a) **Consensus**, in the context of managing the agenda or process of a meeting, or of a conference by telephone or video, means the general agreement of the persons involved in the particular meeting or teleconference. It can also be expressed as a result that the participants can live with, or a judgment arrived at by most of the concerned participants. It does not require unanimity.

(b) **Consensus**, in the context of trying to reach a settlement of the issues in the relicensing, means the general agreement of the Parties that will be expressed as either a unanimous settlement or a partial settlement. No consensus or settlement which fails to include the Licensee can require the Licensee to expend any monies or to undertake or refrain from any specific action.

2. **Party** is an entity, including a corporation or other business organization, a unit of government, a social or environmental organization, or association, with stated interests in the

Project relicensing whose agreement is desired for settlement or consensus, as defined in this Protocol. Any organized entity, by an Authorized Representative, may assert status as a Party to this proceeding by asserting Party status in the signature page to this Protocol. Any organized entity asserting the status of a Party must agree to be bound by the terms of this Protocol.

3. **Participant** is a person or entity who intends to contribute to the meetings and deliberations during the negotiations process, but who is not claiming Party status and will not be canvassed regarding settlement in the decisionmaking process.

4. **Authorized Representative** means a person who is formally appointed by the governing body of a Party to represent its interests in settlement discussions and negotiations. Upon the request of any Party, a person claiming to be an Authorized Representative may be required to demonstrate the fact and nature of his/her appointment.

5. **Representative** is a person who may declare himself or herself a representative of a person or entity which is a declared Party to the proceeding and may participate in meetings on behalf of a Party, but his or her views are not official for the Party unless the person is also designated as an Authorized Representative.

6. **Settlement Working Group (SWG)** is the policy level forum for efforts to develop the Agreement in Principle and Settlement Agreement for the Project relicensing. The Authorized Representatives voluntarily work together in the SWG to achieve a mutually acceptable outcome that satisfies, to the greatest degree possible, the interests of all of the Parties. The SWG is the group responsible for all decisions and actions that are publicly identified as SWG products.

7. **Technical Work Group(s) (TWG)** may be formed at the direction of the SWG, which will designate TWG members for specific anticipated technical tasks. TWGs may develop draft products and make recommendations to the SWG as requested; however, TWGs will not make decisions on behalf of the SWG.

8. **General Meetings of the Parties** are meetings of all Parties and Participants, other than Settlement Working Group meetings and Work Group meetings, that are noticed by the Licensee.

9. **Settlement Working Group meetings** are any meetings or conference calls of the SWG that are noticed by the Licensee other than General Meetings of the Parties and Technical Work Group Meetings.

10. **Technical Work Group meetings** are any meetings or conference calls of one or more TWGs noticed by the Licensee other than General Meetings of the Parties and Settlement Working Group Meetings.

11. **Public Reference File** is the official record of the Project relicensing. The public reference file includes copies of all written correspondence and documentation of phone conversations, meeting notices, agendas and summaries, study plans, study reports, and other documents submitted for inclusion in the file. All documents in the public reference file will be submitted to FERC as part of the formal relicensing record.

12. **Agreement in Principle (AIP)** is a written agreement among some or all Parties that memorializes the general agreement regarding resolution of some or all of the issues identified for negotiations recognizing that additional details must be developed and agreed to in the Settlement Agreement by the Parties in order for a final settlement to be reached. The Licensee will submit to FERC concurrent with its Final License Application any Agreement in Principle reached prior to the filing date of the Final License Application.

13. **Settlement Agreement** is a written agreement among declared Parties that resolves some or all issues among the agreeing Parties. If all Parties to the relicensing sign a settlement agreement that purports to resolve all issues among the Parties (a unanimous settlement), the Licensee will submit the agreement to FERC and assert that all issues have been resolved. The Licensee may also submit a partial settlement of issues among all or some Parties. A partial settlement will inform FERC on the views of only the settling parties.

B. SETTLEMENT WORKING GROUP STRUCTURE

1. The Settlement Working Group (SWG) members will:
 - (a) Ensure that all significant issues and concerns of their organizations and constituents are fully and clearly articulated during SWG meetings;
 - (b) Work together to develop the components of an AIP and a Settlement Agreement;
 - (c) Agree on the desired level of specificity of agreement components;
 - (d) Ensure adequate integration of scientific, technical and economic information to support components of agreement;
 - (e) Ensure that any eventual recommendations or agreements are acceptable to their constituents and/or organizations they were appointed to represent;
 - (f) Concur in decisions about the SWG process, including overseeing the implementation of this protocol;
 - (g) Identify both its Authorized Representative, and if different, official signatories for the AIP and the Settlement Agreement.
2. The SWG may form TWGs and will designate work group members for specific anticipated technical or process tasks. TWGs may develop draft products and make recommendations to the SWG as requested; however, TWGs will not make decisions on behalf of the SWG.

C. GROUND RULES AND GENERAL PROTOCOL

1. Conduct of the Parties:

All persons at any meeting for discussion or negotiation of issues shall conduct themselves professionally and courteously. All Parties and Participants recognize that

each Party has legitimate interests and the right to pursue satisfaction of those interests. Parties will focus on meeting their interests through an interest-based negotiations process, rather than utilizing a positional approach.

2. **Attendance at Meetings:**

(a) Each Party commits to have its Authorized Representative (or Representative serving as a designated alternate) attend each SWG Meeting and at least one Representative attend any TWG meeting (as defined herein) for which the Party has volunteered to participate. Parties commit to staying informed and to working diligently with all other Parties in the relicensing to try to resolve the issues in the licensing process. Parties are encouraged to provide staff with special expertise at meetings where that expertise is likely to be relevant.

(b) Parties and Participants are expected to bear their own expenses for participating in the discussions and negotiations related to the Project relicensing negotiations as anticipated under this Protocol.

(c) The absence of a Party's Authorized Representative or other Representative at a meeting does not limit or constrain the Party's right to participate later in the process, nor does it de-legitimize any action taken at that meeting. Parties recognize that their failure to be represented at meetings to which they have committed will hamper the negotiations process and reduce the likelihood of successful settlement, may diminish the abilities of other parties to understand and accommodate their positions, and is inconsistent with the spirit and intent of this Protocol.

(d) If an Authorized Representative cannot attend a SWG meeting he or she may designate an alternate to attend. It is the responsibility of the Authorized Representative to inform the alternate concerning the current status of the deliberations. All alternates are also bound by this protocol.

(e) Before an individual who is not an Authorized Representative or Representative of an SWG member attends a meeting of the SWG or a TWG meeting the Authorized Representatives and Representatives in attendance at the meeting must approve that individual's attendance by consensus.

3. **Conduct of Meetings:**

For all meetings anticipated under this protocol the Parties agree:

(a) Near the end of each meeting, the Parties and Participants in attendance will discuss the agenda for the next meeting and draw up a list of topics to be considered. The Licensee shall then prepare a detailed agenda.

(b) The Licensee will endeavor to distribute the agenda along with a meeting notice at least two weeks prior to the meeting.

(c) Between meetings, any Party or Participant may suggest agenda changes. The Licensee is not required to accept every suggestion, but will attempt to accommodate

reasonable suggestions. The agenda prepared by the Licensee shall be announced at the beginning of a meeting, and any Party or Participant present may suggest a change or addition to the agenda, which shall be accepted if a consensus of the Parties and Participants present so desire. Thereafter, the meeting shall follow the modified agenda as close as reasonably possible.

(d) Action items will be prepared by the Licensee to assist the SWG or TWG in documenting its progress and activities.

(e) Meetings may be suspended at any time at the request of any Party to allow consultation among group members. Requests should be respectful of other attendee's time. If the use of caucuses becomes disruptive the SWG will revisit the process.

(f) Participation of the Authorized Representatives and Representatives will be guided by the following commitments and ground rules:

- (i) Participate in a free, open and mutually respectful exchange of ideas, views and information.
- (ii) Encourage imaginative thinking and sharing of ideas and solutions; however, speakers agree to endeavor to stick to the topics on the agenda, be concise, and to not repeat themselves. It is agreed that everyone has the right to participate in discussions, but no one has a right to dominate.
- (iii) Limit side conversations and other disruptive behavior (e.g., cell phone calls).
- (iv) Follow through on promises and commitments.
- (v) Bring concerns from their organizations up for discussion at the earliest point possible in the process.
- (vi) Articulate to the best of their ability the interests that underlie issues and concerns in an effort to find common ground among the Parties.
- (vii) Share relevant factual information that will assist the group in achieving its goals. (This does not require the sharing of political, policy, or legal strategies in the proceedings.)
- (viii) Ask questions if they do not understand each other.
- (ix) Attack problems and issues, not each other.
- (x) Be on time for meeting sessions and cooperate to keep all meetings on schedule so they can end on time. However, any meeting can be extended for a specific period of time upon a consensus of Parties fifteen minutes before the scheduled conclusion of the meeting. In such cases, Parties and Participants who had to leave the meeting at or before its scheduled end

time will endeavor to learn about the deliberations they had to miss so that those persons can register any input they may have.

- (xi) By a consensus of those Parties and Participants present, ask any person using profane, disruptive or violent behavior to leave the meeting, or allow a previously excluded person to return to the meeting.

4. Relationship of the Media to Meetings and Communications:

The Parties agree that:

- (a) All General Meetings of the Parties will be open to the media.
- (b) All SWG meetings and TWG meetings will not be open to the media without unanimous consent of those participating in the meeting.
- (c) Parties and Representatives of Parties may make their own views, interests and positions on issues known to the media, but will refrain from making attributions or allegations about other parties' views, interests or positions.
- (d) Requests received from the media related to the SWG process will be referred to the Licensee. The SWG will agree on any media releases on SWG activities and products.

D. STATEMENTS USED DURING THE PROCESS

Any statement made or position taken by a Party during negotiations in an attempt to reach settlement of any issue, which may be less than the result desired by that Party, may not be used by any other Party or Participant in any way, such as evidence of the lack of necessity or factual support for the desired result if settlement is not reached. Any attempt by any Party or Participant to so use any other party's willingness to change position during negotiations for the purpose of achieving settlement is a violation of this Protocol. If the Parties tolerate violations of this Protocol, any Party may consider such violations grounds for withdrawal from the negotiations, and the Licensee may consider it grounds to terminate some or all of the negotiations.

E. AUTHORITY AND LIMITATIONS

- 1. Parties that are government agencies will be represented by Authorized Representative(s) or counsel empowered to participate in the relicensing on behalf of such agencies.
- 2. The Parties recognize that any agency charged with a statutory responsibility under the Federal Power Act has the statutory right to exercise that authority regardless of whether the agency agrees with any position, consensus or settlement which may be taken by others in the relicensing, further recognizing that such agencies may lawfully agree to execute such authorities consistent with an AIP or Settlement Agreement, or both.
- 3. The Parties also recognize that agency representatives and representatives of corporate entities, including the Licensee, may not bind their agencies or corporations to positions or agreements without approval from appropriate levels of authority within their organizations, and

that any position taken by such representatives (at a meeting or otherwise) is merely a recommendation until that appropriate level of authority has officially concurred.

4. All “agreements” reached during the course of the negotiations are by definition “preliminary” agreements subject to the Parties reaching a final settlement. The only documentation of the outcomes of the negotiating sessions on behalf of the Parties prior to reaching an AIP will be preliminary agreements; however, preliminary agreements will not be filed for the record. No written summary of offers and counter offers will be prepared on behalf of the Parties.

5. If all Parties, including all government agencies, reach a comprehensive AIP of all issues subject to these negotiations, the Licensee may represent to the Commission when it files its Final License Application that a comprehensive AIP has been reached. If all issues among all of the Parties, including the Licensee, are ultimately resolved during negotiations by unanimous agreement, the agreement will be reduced to writing and filed with FERC as a full and comprehensive Settlement Agreement of the relicensing issues.

6. Nothing in this Protocol prevents or is intended to prevent the Licensee from filing with the Commission clearly documented partial Agreements in Principle and partial Settlement Agreements reached with some Parties.

F. CONFIDENTIALITY

Except as required to be disclosed by applicable law as determined by the Party receiving the request for disclosure, which may include the federal Freedom of Information Act (5 USC § 522) and applicable Alaska law, each Party agrees that the content and work products of SWG and Work Group negotiations shall not be disclosed to outside organizations, individuals or the media at any time during or after negotiations, unless otherwise unanimously agreed to by the Parties.

G. RIGHT TO WITHDRAW

Any Party may temporarily or permanently withdraw from the SWG at any time after discussing the reasons for withdrawal with the other SWG members. Any entity that withdraws from the SWG shall remain bound by the good faith, confidentiality, and media provisions of this Protocol.

H. RELATIONSHIP TO THE FERC PROCESS

All Parties signatory to this Protocol retain the right to make filings as required by FERC during the pendency of SWG discussions and to include in such filings such arguments, proposals, or evidence as each Party deems appropriate to maintain and preserve any legal rights it may have before FERC in the event that the discussions of the SWG are not successful. No Party may purport to represent the views of the SWG to FERC without the express approval of the SWG. The SWG may agree that certain filings or submittals may be made with FERC on behalf of the SWG or with the SWG’s concurrence.

I. EFFECTIVE DATE

1. The Licensee shall, by September 10, 2004, mail (or personally deliver) to all potential Parties, a copy of this Protocol with a request that they concur in the Protocol. The Licensee shall explain that an individual addressee may respond to the Licensee's communication by signing:

- (a) as the Authorized Representative of a named Party, or,
- (b) as a Participant not seeking status as a Party.

2. This Protocol shall take operative effect on September 30, 2004, for signatories who, in accordance with this Protocol, choose to declare themselves Parties or Participants and who sign the form attached to the end of this Protocol (and, if a Party, designate an Authorized Representative) and return it to the Licensee by September 30, 2004.

3. Any individual or organization that does not respond to the invitation to participate by September 30, 2004, shall not be counted as a Party for purpose of representation in the negotiations. A person or entity in this category by lack of response will be retained on the official mailing list of Participants for all other purposes of this relicensing process.

4. Individuals and organizations not responding to this invitation by September 30, 2004, will be allowed to join in these negotiations if:

- (a) The addition is approved by the unanimous consent of the Parties;
- (b) The individual or organization executes this Protocol;
- (c) An AIP by some or all of the Parties has not yet been officially adopted; and,
- (d) The individual or organization agrees to accept any and all preliminary agreements that may have been reached by the Parties prior to the time that the requirements of subsections (a) and (b) are met.

5. The Parties may approve a revision of this Protocol by consensus as defined in Section A.1 (a).

6. This Protocol and any future revisions thereof will be made a part of the Public Reference File for the Project relicensing by the Licensee.

J. DURATION OF THE PROTOCOL

Except for the commitments in Sections D and F, which shall survive and be effective independently for an additional three (3) years, this Protocol will be operational only until (1) the license application is formally filed with the Commission, or (2) an executed AIP has been filed with the Final License Application, in which case this Protocol shall stay in effect until August 31, 2005. If there is need for continued settlement discussions, the Parties wishing to use the terms of this Protocol must re-execute it in accordance with the procedures of paragraph I.

SIGNATURES OF PARTIES AND PARTY REPRESENTATIVES:

By their signature, the undersigned agree to abide by the preceding Cooper Lake Project Relicensing Negotiations Protocol:

SIGNATURE: _____

PRINTED NAME: _____

DECLARING AS: () PARTY or () PARTICIPANT

NAME OF ORGANIZATION, IF ANY: _____

ADDRESS: _____

TELEPHONE NO: _____

E-MAIL ADDRESS: _____

IF PARTICIPATING AS A PARTY, please designate Authorized Representative:

NAME: _____

ADDRESS: _____

TELEPHONE NO: _____

E-MAIL ADDRESS: _____