Subject: Sharing Technical Information in Support of Non-Federal Hydropower Development

Applicability: Directive

1. References:
   b. ER 380-1-18, Technology Transfer, Disclosure Of Information And Contacts With Foreign Representatives, 1 August 1996.

2. General: The Federal Power Act requires that agencies owning Federal dams cooperate and support individuals and companies desiring to build non-Federal hydropower plants at Federal dams. ER 1110-2-1454 provides the basic guidance for support responsibilities of the Corps under the Federal Power Act. However, that regulation does not address security concerns inherent in the release of technical information about the Corps dams. Since technical information is considered sensitive, the following additional guidance will be implemented until ER 1110-2-1454 is revised.

3. Identification of Parties Seeking Information: Prior to working with an individual or company seeking information about a Corps dam, Corps personnel should determine if the individual or company has a preliminary permit, pending license application, or license from the Federal Energy Regulatory Commission (FERC) and if the document is still valid.
   a. FERC has a formal procedure for issuing preliminary permits and licenses. Information concerning permit holders and pending permits is available from FERC at http://www.ferc.gov. The preliminary permit will identify the dam for which the permit is valid. In addition, FERC preliminary permits, license applications, and licenses do not transfer automatically when companies are purchased by other companies. The new entity must apply for an official transfer of the preliminary permit or license.
   b. District and project personnel should only hold discussions and share information with the permit holder, license applicant or licensee, or their authorized engineering consultant. Discussions with third parties claiming to represent a permit holder, license applicant or licensee...
should not be conducted, except in the presence of the permit holder, license applicant or licensee official representative.

c. The first meeting with a permit holder, license applicant or licensee representative should be in person and conducted at the District office.

4. Information Sharing: Districts will share the technical information with the organization recognized by the FERC as a permit holder, license applicant or licensee, as provided in this section. Districts will review information requested by the permit holder, license applicant or licensee, to determine whether it is sensitive and normally not releasable outside of the Corps. Sensitive technical information is information that could pose a security risk or allow harm to the Corps project, such as design analyses, as-builts or other plan drawings, specifications, operational information, and contingency plans. Information that is not sensitive can be released. District engineering elements will discuss with the permit holder, license applicant or licensee, their plans to determine the area of the dam for which plans and specifications are needed.

a. Permit holders will be allowed to view sensitive plans and specifications, in the District Office. Copies of sensitive information will not be provided. In cases where specific drawings are required for the permit holder’s study of the proposed hydropower facility, the District Engineer may authorize sharing of the information upon completion of a non-disclosure statement. A permit is easily obtainable and is merely an administrative place holder allowing studies at a particular site.

b. License applicants and licensees will be provided with copies of sensitive technical information only to the extent they demonstrate to the District’s satisfaction, that the information is needed to complete their power facilities. Plans and specifications will only be made available for the area of the dam in which a power generation equipment and ancillary raceways are to be installed. When making technical information available, only copies should be provided. The original documents should be kept in the District office.

c. The official representative of the license applicant or licensee shall be required to sign a non-disclosure statement prior to taking copies of technical documents from Government property. The official representative should have the authority to enforce the non-disclosure agreement within the company. The non-disclosure statement will require that the requestor return the documents and any additional copies produced by the requestor, when the documents are no longer required. A recommended non-disclosure statement is attached. A separate non-disclosure statement should be obtained for each project.

5. Dealing with Foreign Entities: Recently, at least one U.S. subsidiary of a foreign company has applied for preliminary permits relating to Corps dams. This same company has purchased one or more existing licenses at Corps dams and operates a hydropower plant at a Corps dam. The District can meet with the U.S. subsidiary just as with any other U.S. company. However, prior to meeting or dealing with representatives of a foreign company, the District must comply with the requirements of reference 1.b.
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a. The requirements of reference 1.b. also apply to third parties working for a permit holder, license applicant or licensee.

b. Districts must clear the documents to be provided with the Corps Foreign Disclosure Officer in accordance with reference 1.b. prior to sharing the material.

6. Points of Contact: The Headquarters points of contact for this guidance are listed below. Each District and MSC should establish points of contact for sharing technical information in support of non-Federal hydropower development.


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JAMES C. DALTON, P.E.
Chief, Engineering and Construction
Directorate of Civil Works

1 Enclosure
ENCLOSURE 1
Sharing Technical Information in Support of Non-Federal Hydropower Development in Accordance with the Federal Power Act

I, the undersigned, am receiving information sensitive to the national security of the United States, as it is related to the structural integrity of the Federal dam named below. I declare that the following statements are correct:

I, or the entity I represent, hold a preliminary permit, license application, or license from the Federal Energy Regulatory Commission (FERC) for non-federal hydropower facilities at a Federally owned dam; and I am the official representative of such entity for the purpose of conducting technical investigations leading to the construction of a non-federal hydropower facility.

I have the authority and power to bind all members and/or employees of the entity I represent to the statements below.

The information entrusted to me will only be used by me or others within the company I represent who have a need for the information in development of hydropower at the Federal dam named below, and will not be released to any other third party individuals or entities (including subsidiaries and parent entities) not listed below without prior written consent of the U.S. Army Corps of Engineers, ___________ District (“District”).

Entities Authorized to share this information:
_________________________________________
_________________________________________

I acknowledge that the information provided (see attached list) is considered sensitive to the national infrastructure of the United States, and I will take reasonable measures to safeguard this information from being distributed outside the company(ies) named above, for which I am responsible. The information will not be used for any purposes other than the investigation and development of non-federal hydropower at the Federal dam listed below. When the entities named above no longer need the information for their investigation or development activities; or if they withdraw their permit or application, or cancel the FERC license; all the information will be returned to the District including all copies made during that process.

_____________________________________
(Name of Federal Dam)
I will direct all questions regarding use, safekeeping, distribution, and/or retention of this information to the District Hydropower Coordinator, the District Dam Safety Officer, or the District Security Officer

_____________________________________
(Signed) Date: ________________

_____________________________________
Printed Name for __________________________
Name of Entity and Address

Witnessed by: ___________________________
Name for the District
Signature