

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL ENERGY REGULATORY COMMISSION,
GEORGIA STATE HISTORIC PRESERVATION OFFICER,
SOUTH CAROLINA STATE HISTORIC PRESERVATION OFFICER,
AND
GEORGIA POWER COMPANY
REGARDING ALTERATIONS TO TUGALO DEVELOPMENT OF
THE NORTH GEORGIA HYDROELECTRIC PROJECT
IN RABUN COUNTY, GEORGIA AND
OCONEE COUNTY, SOUTH CAROLINA
(FERC PROJECT NO. 2354-152)
HP 210720-010; 21-EJ0211**

WHEREAS, as part of the Federal Energy Regulatory Commission's (Commission) relicensing of Georgia Power Company's (Licensee) North Georgia Hydroelectric Project (FERC Project No. 2354) (Project), a historic context study and inventory of the Project dam and supporting structures was conducted in 1990; and

WHEREAS, the North Georgia project works were determined eligible for listing in the National Register of Historic Places (National Register); and

WHEREAS, Licensee has proposed necessary system upgrades to the Tugalo development ("Undertaking"), including the generators and turbines, which are considered character-defining features of the powerhouse; and

WHEREAS, the Commission has determined that the Undertaking will have an adverse effect on the Tugalo Development, which is a contributing resource to the National Register-eligible North Georgia project works; and

WHEREAS, the Commission, Licensee, Georgia State Historic Preservation Officer (Georgia SHPO), and South Carolina State Historic Preservation Officer (South Carolina SHPO) agree that there is no practicable alternative to avoid or minimize the adverse effect to cultural resources and historic properties; and

WHEREAS, the Commission has executed a Programmatic Agreement ("PA") with the Advisory Council on Historic Preservation (Advisory Council), the Georgia SHPO, South Carolina SHPO, and the Licensee, on January 30, 1996, as a condition of issuing a license for FERC Project No. 2354 on October 3, 1996, and finds the PA consistent with Commission guidelines; and

WHEREAS, the Licensee in accordance with Article 417 of the FERC License

(License) and the requirements of the associated PA for the project has developed and implemented a Cultural Resources Management Plan (CRMP) for the Project; and

WHEREAS, the Licensee and Commission have consulted with the Georgia SHPO and the South Carolina SHPO pursuant to regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (16 USC 470f), 36 C.F.R. Part 800; and

WHEREAS, the Undertaking may affect lands important to the Eastern Band of Cherokee Indians, the Cherokee Nation, the United Keetoowah Band of Cherokee Indians, and the Muscogee (Creek) Nation, (hereinafter, Tribes) and the Tribes have participated in consultation and have been invited to concur in this MOA, but have elected not to participate; and

WHEREAS, the Commission, in coordination with the Licensee, acknowledges its continued responsibility to engage in meaningful consultation with Tribes (e.g. Executive Order 13175, U.S.C. 470a(d)(6)(B), and the November 5, 2009 Presidential Memorandum on Tribal Consultation) throughout the process of carrying out the stipulations of this MOA; and

WHEREAS, the Commission has consulted with the Coushatta Tribe of Louisiana, Alabama-Quassarte Tribal, Alabama-Coushatta Tribe of Texas, Poarch Board of Creek Indians, Kialegee Tribal Town, Seminole Tribe of Florida, Thlopthlocco Tribal Town, Seminole Nation of Oklahoma, Eastern Band of Cherokee Indians, Catawba Indian Nation, Muscogee (Creek) Nation, Cherokee Nation and United Keetoowah Band of Cherokee Indians regarding the proposed amendment and no comments were received; and

WHEREAS, on October 27, 2021, the Commission issued a notice of application for filing and soliciting motions to intervene, comments and protests regarding the proposed Undertaking; and one comment regarding cultural resources was received¹; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), on May 19, 2022, the Commission notified the Advisory Council of its adverse effect determination with specified documentation, and the Advisory Council was invited to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1) and on May 26, 2022, the Advisory Council stated it has chosen not to participate in the consultation; and

¹ The one comment regarding cultural resources pertains to a possible grave site in the reservoir; however, Commission staff determined it is about a site outside of the scope of the Undertaking and will be addressed in the National Environmental Policy Act document.

WHEREAS, the Commission will send a copy of this executed agreement to the Advisory Council; and

WHEREAS the Licensee participated in the consultation for the Undertaking described above, and pursuant to a Commission order, the Licensee will be directed to implement the stipulations below and has been invited to sign this MOA as a concurring party per 36 C.F.R. Part 800.6 (c)(2);

NOW THEREFORE, the Commission, the Licensee, the Georgia SHPO, and South Carolina SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations to consider the effects of the Undertaking on historic properties, and further agree that the stipulations take into account the effect of the Undertaking on historic properties:

STIPULATIONS

The Commission will condition any approval issued in connection with the Undertaking to require the satisfaction of the following stipulations and will ensure that the following stipulations are carried out by a professional meeting the applicable Secretary of the Interior's Professional Qualifications Standards (48 FR44738-44739) in the appropriate discipline:

I. DOCUMENTATION

Upon execution of the MOA and prior to commencing the above-referenced upgrades, the licensee will perform or oversee the performance of Level II Historic American Engineering Record (HAER) documentation of the generators and turbines, to include a historic narrative, measured drawings, and medium format black and white photography. The draft HAER documentation will be submitted to Georgia SHPO and South Carolina SHPOs and the National Park Service (NPS) for review and comment. Upon receipt of all comments, the Licensee will revise the HAER documentation and submit to the Georgia SHPO and Southern Carolina SHPOs and the NPS for acceptance. Once accepted by the NPS, the record will be housed at the Library of Congress. Final hardcopies and digital copies should be submitted to the Georgia SHPO and South Carolina SHPO for their records. This record will also be available to the public via Georgia Power's North Georgia website (<http://georgiapowerlakes.com/northgeorgialakes/>). The licensee must file documentation, and concurrence from the Georgia and South Carolina SHPO, of completion of this stipulation.

II. PUBLIC INTERPRETATION

Upon completion of the system upgrades at the Tugalo Development, the licensee will, in consultation with the signatories of the MOA, prepare and install interpretive signage at Tugalo Park describing the history of hydropower at the development and the prehistory and history of the region. Draft interpretive panel text will be submitted to the Georgia and South Carolina SHPOs for review and comment prior to installation. Photographs of the installed interpretive signage will be submitted to the Georgia SHPO and South Carolina SHPOs for their records.

III. UNANTICIPATED DISCOVERIES

If the Licensee determines during project activities that the Undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register or will impact known resources in a greater capacity, the Licensee will address

the discovery in accordance with the CRMP.

IV. MONITORING AND REPORTING

Annually, following the execution of the MOA, until it expires or is terminated, the Licensee must provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report must include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Licensee's efforts to carry out the terms of this MOA.

V. DISPUTE RESOLUTION

Should any party to this MOA object or be unable to complete the execution of any provisions of the MOA, the Commission must take the objection into account and consult as needed with the objecting party to resolve the objection.

i. If the Commission determines that the objection cannot be resolved, the Commission must forward all documentation relevant to the dispute, including the Commission's proposed resolution to the Advisory Council. The Advisory Council must provide the Commission with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Commission must prepare a written response that takes into account any timely advice or comments regarding the dispute from the Advisory Council, signatories and concurring parties, and provide them a copy of this written response. The Commission will then proceed according to its final decision.

ii. If the Advisory Council does not provide its advice regarding the dispute within the thirty (30) days, the Commission may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Commission shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the Advisory Council with a copy of such written response.

iii. The Commission's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Advisory Council.

VII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the Commission must either (a) execute a MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the Advisory Council under 36 C.F.R. § 800.7. The Commission shall notify the signatories as to the course of action it will pursue.

VIII. DURATION

This MOA will expire if its terms are not carried out within five years (5) from the date of its execution. Prior to such time, the Commission may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with section VI above.

EFFECTIVE DATE

This MOA will take effect on the date that it has been fully executed by the Commission, the Georgia SHPO, and the South Carolina SHPO and incorporated into the license for the Project.

EXECUTION and implementation of this MOA, pursuant to 36 C.F.R. § 800.6, by the Commission, the Licensee, Georgia SHPO and the South Carolina SHPO, its submission to the Advisory Council in accordance with 36 §C.F.R., 800.6(b)(1)(iv), and implementation of its terms evidence that the Commission has taken into account the effects of this Undertaking on historic properties and thereby complied with Section 106 of the NHPA, and is further evidence that the Commission has afforded the Advisory Council an opportunity to comment on the Undertaking and its effect on historic properties.

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SIGNATORY: FEDERAL ENERGY REGULATORY COMMISSION

By *CarLisa Linton* Date 8/18/2022

CarLisa Linton, Director
Division of Hydropower Administration and
Compliance

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SIGNATORY: GEORGIA STATE HISTORIC PRESERVATION OFFICER

By J1 D4 Date September 15, 2022
Jennifer Dixon
Deputy Georgia State Historic Preservation Officer

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**SIGNATORY: SOUTH CAROLINA STATE HISTORIC PRESERVATION
OFFICER**

By  Date 8/29/22

W. Eric Emerson
South Carolina State Historic Preservation Officer

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CONCUR: GEORGIA POWER COMPANY

By  Date 9/19/2022
Kevin Pearson
General Manager, Land Department
Georgia Power Company