



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 WEST OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

July 7, 2022

Regulatory Division

PUBLIC NOTICE
Savannah District

PROPOSAL TO ACCEPT AND EXPEND PUBLIC UTILITY COMPANY FUNDS
CONTRIBUTED BY THE GEORGIA POWER COMPANY (GPC)

This Public Notice announces that the U.S. Army Corps of Engineers, Savannah District, Regulatory Division (Savannah District) is considering a proposal to accept and expend funds provided by the GPC to expedite processing of GPC Department of the Army (DA) permit applications, subject to a series of limitations in accordance with Section 214 of the Water Resources Development Act of 2000, as amended.

Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541), as amended and codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by non-Federal public entities, public-utility companies, natural gas companies, or railroad carriers to expedite the evaluation of a permit of that entity, company, or carrier related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. The authority to accept and expend funds under Section 214 has been delegated from the Secretary of the Army to District and Division Commanders, including the Commander of the Savannah District, U.S. Army Corps of Engineers.

GPC is eligible to provide funds to the Savannah District under Section 214 as a public utility company. Public-utility companies include electric utility companies, which are companies that own or operate facilities used for the generation, transmission, or distribution of electric energy for sale. It is important to note that, as defined in Section 214, public-utility companies are not necessarily "public" companies (i.e. could be private companies). These companies are subject to federal regulation (dating from the 1930s) outside of Corps authorities, because Congress determined that such companies affected the public interest. Regulatory Headquarters has determined that projects involving facilities for the generation, transmission, or distribution of electric energy for sale are appropriate for review under Section 214. Energy exploration and production activities, such as drilling, hydrofracturing, or mining, are not to be reviewed under Section 214 agreements with public-utility companies, because these activities do not involve the generation, transmission, or distribution of electric energy. One or more public utility companies may enter into a Section 214 funding agreement with the Corps.

Purpose for the Proposed Funding Agreement: The Corps' Regulatory Program is funded as a Congressionally-appropriated line item in the annual Federal budget.

With the additional funds, the Savannah District would hire an additional Regulatory Project Manager to work on GPC proposed and/or funded projects and permit applications subject to Section 404 Clean Water Act, and/or Section 10 Rivers and Harbors Act of 1899 authorities. Funds received from GPC would be used by the District to expedite the review of GPC's permit applications in accordance with the provisions of Section 214 of WRDA 2000. The Savannah District would establish a separate account to track receipt and expenditure of the funds to ensure they would be expended for the intended purpose. This District Regulatory Project Manager would charge their time against the established account when processing GPC's priority permit applications and conducting other related activities as specified below (see "Activities for Which Funds Would be Expended").

Activities for Which Funds Would be Expended: Funds would be expended primarily on the labor and overhead of the Savannah District personnel processing GPC's priority permit applications. Such permit application processing activities would include, but not be limited to, the following: pre-application meetings, application reviews, jurisdictional determinations, site visits, preparation of public notices, preparation of correspondence, meetings, coordination activities, endangered species and cultural resource reviews, public interest review, distribution of public notices, analysis of alternatives, compensatory mitigation proposal reviews, preparation of environmental assessments or environmental impact statements, preparation of permit decision documents, compliance inspections, training, travel, outreach, the development of programmatic tools, the review of mitigation bank instruments, and participation in early project planning or coordination activities. Funds may also be expended to pay for support services to perform select duties, such as technical writing or review of specific technical or legal documents (e.g. biological assessments for endangered species or contracts to develop NEPA documents).

If the funds accepted by the Savannah District under a funding agreement are fully expended and are not renewed, any remaining tasks necessary to complete processing of the GPC's permit application(s) would be handled like those of any other non-participant, subject to the availability of funds.

How Funds are Expected to Expedite Permit Review Process: The Savannah District and GPC believe that a dedicated Corps Project Manager would be able to develop expertise in the types of projects performed by GPC, which could improve the efficiency of the review process. Further, based on experience and the volume of expected GPC permit applications going forward, the Savannah District expects that using funds accepted from GPC to fund a full-time Corps Project Manager for GPC permit applications would result in expedited reviews for GPC projects. The funds would allow more expedited exchange of concerns and information between the USACE, GPC and other agencies, including initiation of such dialogs prior to the submission of the application. This early and continuing dialog is expected to enable GPC and entities receiving GPC funding to incorporate these concerns in the project design and application submittals. Under the proposed process of efficient decision

making, the Savannah District would be obtaining information early in the process and prior to the submission of an application.

After submittal of the application, it is expected that this early involvement would result in a shortening of the time between application and the permit decision. The permit decision itself would not be affected by the funds and this process. The Savannah District's decision whether to issue or deny the permit is and would continue to be based on Corps regulations, the analysis of the proposed project, the applicant's submittals, comments from the public (where applicable) and other pertinent information.

Procedure to Ensure Impartial Decision-Making: To ensure the funds would not impact impartial decision-making, the District would incorporate the following procedures into the funding agreement:

- (a) All final permit decisions where funds were used for the permit review process would be reviewed and approved in writing by a Corps official that is at least one level above the typical Corps decision-maker. Funds accepted under the agreement would not be expended for review of such decisions by supervisors or other Corps officials in the decision-making chain of command. Additionally, the one-level-above reviewer would hold a position that is not partially or fully funded by GPC for at least one year.
- (b) Instruments for mitigation banks or in-lieu fee programs proposed for review by the funding entity would be signed by the District Regulatory Division Chief, an equivalent, or a higher level position that is not funded by any funding agreement.
- (c) All preliminary jurisdictional determinations (JDs) and approved JDs where funds would be used to complete the JD would have documentation in the administrative record that a non-funded Corps District Regulatory Program staff member conducted a review of the determination. This review would not require a field review. For those approved JDs that require coordination with the U.S. Environmental Protection Agency, additional internal review would not be required.
- (d) The Corps would not use funds accepted under this agreement to conduct enforcement activities; this includes, but is not limited to, the resolution of non-compliance issues.
- (e) The Corps would comply with all applicable laws and regulations, and would not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.

- (f) To ensure transparency, the Corps would ensure the funding agreement and all final permit decisions carried out using funds accepted from the GPC would be made available to the public on the Corps Headquarters' public web pages at: <https://permits.ops.usace.army.mil/orm-public#> and <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/>.

Impacts to the Regulatory Program: The Savannah District does not expect this method of permit review of GPC proposed and/or funded projects to negatively impact the Districts' Regulatory Program or to increase the processing time for other permit evaluations. With the addition of personnel dedicated to work on GPC proposed and/or funded projects, other current Regulatory staff would be able to devote their resources to non-GPC projects.

Consideration of Comments: The Savannah District is soliciting comments on the proposal to accept and expend funds from the GPC from the public, Federal, State and local agencies and officials, and other interested parties. Comments will be made part of the District's administrative record and will be considered in the District's decision of whether to enter into the proposed funding agreement. After considering public comments, if the Savannah District Commander determines, that the acceptance and expenditure of the funds would be beneficial and in compliance with the requirements of Section 214 of WRDA 2000, as amended, that the District would be able to preserve impartial decision-making, and that the timeframes of permit application reviews for other applicants in the District would not be adversely affected, then the Savannah District may execute a Memorandum of Agreement (MOA) with the GPC pursuant to Section 214 and accept funds from the GPC to expedite the review of their priority permit applications. A second informational public notice will be issued regarding the District Commander's final decision on this matter. If a MOA is executed and later amended or extended, no new public notice would be issued, provided that the purpose of accepting funds remains the same as that described in this notice.

Submission of Comments: Interested parties may submit, in writing, any comments concerning this proposal. Correspondence concerning this Public Notice should refer to this Public Notice and should be directed to the Commander, U.S. Army Corps of Engineers, Savannah District, Attention: Mr. Jason D. O'Kane, 100 West Oglethorpe Avenue, Savannah, Georgia 31401-3604.

All Comments should be received no later than 30 days from the date of this Public Notice. If you have any questions concerning this matter, please contact Mr. Jason D. O'Kane at (912) 652-5276, or email at jason.d.okane@usace.army.mil. Please refer to this Public Notice in your comments.

For additional information about our Regulatory Program, please visit our web site at <https://www.sas.usace.army.mil/Missions/Regulatory.aspx>.