

December 6, 2017

Major General Ed Jackson
Deputy Commanding General for Civil Works and Emergencies
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1010

Dear MG Jackson:

The American Association of Port Authorities (AAPA) appreciates your efforts to travel to Houston last week to meet with port leaders and discuss Corps changes to its utility relocations policy associated with channel improvement projects. The port leaders valued hearing your explanation and gained a better understanding of the basis for the change. We also appreciate that you listened to our concerns and expressed a willingness to consider modifications to the policy, either through revised guidance or legislative language clarifying Congressional intent.

Ports worked with the Corps within the requirements of Policy Guidance Letter (PGL) 44 for nearly 22 years. Over this period, there were areas of PGL 44 that concerned ports and that we desired to address when a Corps review and revision took place. We feel it was a missed opportunity to have addressed these concerns when the Corps developed and issued the new policy. Our understanding of your explanation was that the policy change was required as PGL 44 was viewed as not consistent with the original WRDA 1986 legislation with respect to cost shared utility relocations. Our review of the new policy reveals that it too establishes policy that goes beyond what is in the WRDA 1986 legislation. Two specific examples are listed below.

Section 5, Utility Relocation Payment Responsibility. “This rule is intended to ensure that non-Federal sponsors bear at least (emphasis added) 50 percent of the cost of deep-draft utility relocations.” WRDA 1986 states 50 percent without the phrase ‘at least.’ We believe this has potential cost implications for non-federal sponsors, as well as lengthen project delivery time, and needs to be revised.

Section 7.f, which requires the non-federal sponsor to provide “... a letter signed by the governor or a duly authorized state official, concurring in the non-federal sponsor’s request that the Corps exercise the navigational servitude.” We see no legal basis in WRDA 1986 nor language in pipeline owners Corps permits for this requirement. We believe this section should therefore be deleted and ask you to consider this revision to the policy.

As our port leaders highlighted in their remarks, utility relocations are a challenging issue for them. Utility relocations must be accomplished and paid for ahead of dredging activities.

Given the large number of energy facilities using these channels and pipelines underneath these channels, this cost can have a significant impact on the decision to proceed with the project or have the nation forgo the economic expansion benefits.

In conclusion, we respectfully request the guidance be revised to delete the ‘at least’ in Section 5, and delete the requirement for a letter from the governor per Section 7.f. We would appreciate an expeditious response to these requests in order to determine next steps. Please feel free to contact me at knagle@aapa-ports.org or Jim Walker, Director of Navigation Policy and Legislation, at jwalker@aapa-ports.org or (703) 684-5700.

Respectfully,

A handwritten signature in black ink, appearing to read "Kurt Nagle", with a long horizontal flourish extending to the right.

Kurt Nagle
President & CEO

cc: Noel Clay
Amy Frantz
Tom Smith
Jeff McKee