

May 21, 2019

**VIA EMAIL - DOER.RPS@mass.gov**

John Wassam  
Department of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

Re: RPS Class I and RPS Class II Regulations

Dear Mr. Wassam:

This is to offer comments on the reference proposed rules. I am writing in my capacity both as a Board member of the Low Income Hydropower Institute (LIHI) and as an attorney, whose practice includes representation of owners and developers of hydroelectric facilities. Although my clients are in the Pacific Northwest and California, DOER's proposed rules could affect them directly by undermining the credibility of LIHI certification and the organization's operating viability.

DOER's notice inviting comment notes that the proposed regulation would eliminate the requirement for recertification by LIHI, and instead rely on self-certification by project owners. The notice describes this change as "consistent" with the recommendations in DOER's Report on Permitting Small and Low Impact Hydropower Projects in Massachusetts (August 30, 2016; the "Report"). The object of this change would be to "reduce the financial burden on low impact projects by eliminating LIHI annual fees and eliminating re-certification fees and expenses." Report at 26.

However, the Report acknowledges that:

LIHI has indicated that they receive virtually no other sources of revenue outside the fees collected from Certificate applicants and Certificate holders, and the annual maintenance fee is the primary source of operating income for the Institute. *Id.*, at 18.

These fees support a comprehensive review and evaluation process conducted by LIHI, according to objective standards, which includes ongoing interaction with Certificate holders. While the Report observes that LIHI never has denied certification, the reason is that LIHI works closely with applicants and Certificate holders to ensure a successful outcome. The Report also notes that “. . . LIHI certification is currently the only pathway which has successfully been used for RPS qualification of a hydropower facility.” *Id.* at 19.

Therefore, while the current proposal to substitute self-recertification for LIHI recertification is consistent with part of the Report, it is inconsistent with maintaining the robust program LIHI has established that permits hydropower facilities to meet RPS standards, as described elsewhere in the Report. If DOER's object is to incentivize owners and developers, through RPS credits, to take steps to reduce the environmental impacts of hydropower projects, the public must have confidence that the program justifying RPS qualification is rigorous. Self-certification will have the opposite effect in that it eliminates an essential objective outside review of ongoing operations.

The only reason that my clients would pursue LIHI certification is because the public and regulatory agencies accept that LIHI provides that objective, rigorous review. Although hydropower is an emissions free source of renewable energy, many in the public regard hydropower as environmentally destructive. Working with LIHI to minimize impacts helps hydropower to gain public acceptance as a desirable feature in a renewable resource portfolio.

DOER's interest in reducing the cost of RPS certification is commendable. However, eliminating the requirement for LIHI continued involvement post-certification may be shortsighted. Changes that reduce LIHI's financial viability are antithetical to DOER program goals.

In conclusion, I urge DOER to maintain LIHI recertification as an essential element of RPS qualification. Thank you for the opportunity to comment.

Very truly yours,

Davis Wright Tremaine LLP



Richard M. Glick

cc: Shannon Ames