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John Wassam

Massachusetts Department of Energy Resources

100 Cambridge Street, Suite 1020

Boston, MA 02114

RE: RPS Class I &amp; II Rulemaking

Comments on Proposed Changes to 225 CMR 14.00 and 225 CMR 15.00 Regulations

Dear Mr. Wassam,

A number of hydroelectric facilities located in Vermont are qualified by the Massachusetts Department of Energy Resources (MA DOER) to participate in the Massachusetts Renewable Portfolio Standards (RPS) markets. As such, changes to this program may materially affect public trust resources of the citizens of Vermont. With this perspective in mind, the Vermont Agency of Natural Resources (VT ANR) has reviewed the proposed changes to the RPS Class I (225 CMR 14.00) and RPS Class II (225 CMR 15.00) Regulations and offers the following comments.

**Background**

On April 5, 2019, the Department of Energy Resources (DOER) filed amended draft regulations with the Secretary of State's office, including 225 CMR 14.00: Renewable Energy Portfolio Standard – Class I and 225 CMR 15.00: Renewable Energy Portfolio Standard – Class II. The changes proposed by MA DOER include eliminating the requirement that small hydroelectric facilities must renew their Low Impact Hydropower Institute (LIHI) certification in order to remain qualified. In lieu of certification renewals by LIHI, DOER plans to require all qualified facilities to self-certify at intervals specified by DOER that they continue to meet any conditions imposed and operate in a manner consistent with their initial certification. MA DOER cites the basis for these changes as recommendations made in a 2016 report, Report on permitting small and low impact hydropower projects in Massachusetts, prepared by GZA GeoEnvironmental Inc (GZA).

**Comments**

In order to provide these comments, VT ANR reviewed the 2016 report by GZA. VT ANR is dubious that self-certification is an adequate mechanism for ensuring the statutory environmental criteria set forth in the Massachusetts Green Communities Act (MA GCA) are attained. However, leaving that very real concern aside and assuming self-certification is 100% effective in ensuring the original terms of certification are met, the proposed change will still fail to ensure the statutory environmental criteria set forth in the MA GCA are attained. Further, while the intent of the proposed change is to reduce the financial burden on low impact projects by eliminating LIHI annual fees and eliminating recertification fees and expenses, VT ANR does not believe the proposed change will have its intended effect, but is concerned that the changes will be less protective of resources held in the public trust.

As described in the 2016 report (p. 18), when a facility is recertified by LIHI, “the criteria for resource protection are reviewed, as with the initial certification. Unless there have been significant changes within the river basin, the level of effort on the Applicant is typically reduced during a recertification as compared with in initial certification. This is

because most of the required documentation will have been developed during the initial application”. This raises a critical function of the LIHI recertification process that will not continue if the proposed change goes into effect. Under the proposed rulemaking, if there have been significant changes to the river basin (e.g. listing of endangered species) or if more information becomes known about the project (e.g. effectiveness testing revealed fish passage to be ineffective) there would no longer be avenue to consider these changes in the context of project operations, rather the applicant would simply have to self-certify the conditions of the initial certification were complied with. Thus, the proposed mechanism will not be effective in ensuring the environmental criteria of the GCA are attained and public trust resources are appropriately protected.

The report (p.18) also describes the annual fee that is charged by LIHI for maintaining low impact certification. The report notes, “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”. This description highlights a flaw in the logic of the proposed change. In a scenario in which LIHI does not alter its fee structure, the proposed change may threaten the financial solvency of LIHI, putting the existence of the institute at risk, potentially inhibiting the qualification of facilities by MA DOER. However, VT ANR believes it is more likely that LIHI would alter its fee structure to front load the maintenance fees into the initial certification process. This would undercut the intent of the proposed change, to reduce the financial burden on low impact projects, while the higher upfront costs may also act as a disincentive for projects to pursue LIHI certification.

The report notes that net metering is a key regulatory issue that affects the financial performance and thus viability of existing and proposed hydroelectric projects. Currently, net metering is limited to projects of 60 kW or less. The report suggests that increasing the cap would increase hydropower revenue and allow for long-term power purchase agreements which would provide more certainty and stability to hydropower projects. Such a change would not reduce environmental protections and would likely be more effective in addressing any financial pressures associated with the ownership of a hydroelectric project.

## **Recommendation**

The proposed change for small hydroelectric facilities should not be adopted. The proposed change is likely to be ineffective in reducing the financial burden of low impact projects, at the cost of reducing environmental protections for aquatic resources in a manner inconsistent with statutory requirements. It is the position of VT ANR that the current RPS qualification procedure best ensures both the environmental criteria of the GCA are met and that the operation of qualified hydroelectric facilities in Vermont are appropriately protective of Vermont’s natural public trust resources.

If the intent of MA DOER is to provide financial support for hydropower projects, VT ANR encourages MA DOER to explore solutions that have a higher likelihood of achieving their intended effect and would not reduce protections for aquatic resources, such as raising the cap on net metering eligibility.

Thank you for consideration of our comments.

Very truly yours,



Eric Davis  
River Ecologist