

112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358



TTY/TDD (VT: 800-253-0191)
FAX: 802-828-3351
E-mail: puc.clerk@vermont.gov
Internet: <http://puc.vermont.gov>

**State of Vermont
Public Utility Commission**

RULE 4.500 SAFETY OF HYDROELECTRIC DAMS

Responsiveness Summary

February 27, 2023

During the public comment period for Rule 4.500, Safety of Hydroelectric Dams, the Vermont Public Utility Commission (“Commission”) received four written comments.

Vermont Department of Public Service

The Vermont Department of Public Service filed comments stating that it supports the Commission’s proposed revisions to Rule 4.500.

The Commission has not made any changes to the proposed rule in response to this comment.

Vermont Independent Power Producers Association

The Vermont Independent Power Producers Association (“VIPPA”) filed comments asking the Commission to include a statement in the proposed rule revision clarifying that the Commission’s dam safety rule does not apply dams owned and operated by the United States government or dams under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) by license or exemption.

The addition of an applicability statement will clarify that the application of the Commission’s Rule 4.500 is consistent with the statutory jurisdiction set by 10 V.S.A. § 1081, which excludes nonfederal dams subject to FERC licensing from Commission jurisdiction. The Commission has added an applicability statement in new section 4.505 in response to this comment, which clarifies that Rule 4.500’s applicability is consistent with the statutory jurisdiction:

4.505 Applicability

This rule applies to dams that are under the jurisdiction of the Public Utility Commission pursuant to 10 V.S.A. § 1081.

Vermont Natural Resources Council

The Vermont Natural Resources Council's ("VNRC") comments state that the proposed changes address some of the shortcomings of the current rule text by updating the criteria to be used to determine the appropriate hazard classification for dams under the Commission's jurisdiction. However, VNRC questioned why the proposed changes did not also update the inspection frequency requirements to match those required by the Vermont Department of Environmental Conservation's ("DEC") dam safety rule, the Federal Energy Regulatory Commission rules, and other state requirements. VNRC concluded that the proposed rule should adopt the same periodic inspection schedule as the DEC rule.

The Commission's Notice of Proposed Rule, issued on October 10, 2022, in Case No. 22-4420-RULE, referenced a letter sent to the State Auditor that stated the reason why the Commission was not updating inspection frequencies in this rulemaking. The letter explained that, although the Commission had initially planned to update both the hazard potential classifications and inspection frequencies in Rule 4.500 to match DEC's dam safety rule, the Commission was unable to update the inspection frequencies because DEC had not yet determined the substantive requirements for its comprehensive and periodic inspections. The letter included the following explanation:

The Commission's understanding is that the more frequent periodic inspections under DEC's Dam Safety Rules will be less comprehensive than the specific requirements of the Commission's rule, and that the less frequent comprehensive inspection will include more specific requirements than the Commission's rule. Although we will not know the specific requirements of DEC's inspection types for certain until DEC completes its rulemaking, the Commission's current inspection requirements likely fall somewhere between those of DEC's Dam Safety Rules—less frequent and more involved than DEC's periodic inspections, but more frequent and less involved than DEC's comprehensive inspections. Until we know the specific requirements of DEC's periodic and comprehensive inspections, however, the Commission cannot fully harmonize its dam safety rule with DEC's Dam Safety Rules.¹

DEC held a public interest group meeting for phase two of its dam safety rulemaking process on February 15, 2023. The phase two rulemaking process will result in additional rules that complement DEC's existing dam safety rule and define the substantive requirements of the DEC's comprehensive and periodic inspections. Once the DEC's phase-two rulemaking is

¹ The August 24, 2022, letter to the Auditor is attached to this Responsiveness Summary.

complete, the Commission will initiate its own second-phase rulemaking to update the inspection frequencies and requirements of Rule 4.500.

The Commission has not made any changes to the proposed rule in response to this comment.

Green Mountain Power Corporation

On January 6, 2023, the Commission requested comments from any interested parties about the typical cost of dam safety inspections required by the Commission's dam safety rule and any anticipated effects on utility rates if increased inspection frequencies are necessary. Only Green Mountain Power Corporation ("GMP") provided comments responding to the Commission's request.

GMP stated that it reviewed recently completed inspections of its dams and found the following cost ranges, organized by hazard classification:

- High hazard: \$10,000 (simple) to \$20,000 (complex)
- Significant hazard: \$10,000 (simple) to \$20,000 (complex)
- Low hazard: \$10,000 (simple) to \$15,000 (complex)

GMP states that its dam safety inspections are already performed on a routine basis and does not anticipate any additional cost impacts to ratepayers from the rule revision.

The Commission has not made any changes to the proposed rule in response to this comment.