



**State of Vermont
Public Utility Commission**

March 29, 2023

Dear Members of the Legislative Committee on Administrative Rules:

The Vermont Public Utility Commission (“Commission”) received more feedback from the Vermont Independent Power Producers Association (“VIPPA”) on our final proposed Commission Rule 4.500 (Safety of Hydroelectric Dams) on Monday, March 27, 2023. VIPPA’s comments are in addition to the comments received from the Office of Legislative Counsel that we notified LCAR about last week.

VIPPA notes that certain unamended portions of Rule 4.500 require owners of federal dams to file inspection reports and emergency action plans with the Commission. Federal dams are regulated by the Federal Energy Regulatory Commission are not subject to Commission jurisdiction pursuant to 10 V.S.A. § 1081.¹

In response to that feedback, the Commission wishes to further amend our proposed rule by deleting any provisions imposing obligations on federal dams not regulated by the Commission. This change has no substantive impact on the dams over which the Commission has jurisdiction and aligns the rule with the Commission’s statutory jurisdiction.

The Commission proposes deleting the following provisions (indicated in italics):

4.522(B): *The owner of any dam which must be inspected by an independent consultant pursuant to regulation by the Federal Energy Regulatory Commission, or which is inspected for safety by employees or agents of the Federal Energy Regulatory Commission, may file with the Commission a copy of the report of such inspection. Unless otherwise determined by the Commission, such filing shall satisfy the inspection requirement of this Rule.*

4.524(A): *For dams which are inspected pursuant to Federal Energy Regulatory Commission rule, a copy of the most recent inspection report shall be filed within ninety days of the effective date of this Rule.*

4.525(A)(1): After the initial inspection and report under this subpart, subsequent inspections under this subpart must be completed and the reports on them filed at the following intervals:

¹ Act 161 of 2018 amended state statute to clarify that the Commission’s jurisdiction over hydroelectric dams is limited to nonfederal dams, in other words hydroelectric dams that are not regulated by the Federal Energy Regulatory Commission.

For dams which are inspected pursuant to Federal Energy Regulatory Commission rule, within thirty days of the availability of each scheduled inspection report.

4.532(C): *Notwithstanding the above, if corrective action is required by any federal agency, including the Federal Energy Regulatory Commission, and the owner or operator complies with the instructions provided by such federal agency, such compliance shall constitute sufficient action under this section.*

4.543(A): *The owner or operator of any dam which is required to maintain an emergency action plan by the Federal Energy Regulatory Commission shall file a copy of the Commission's approval letter for its most recent plan.*

4.543(B): *The copy of the emergency action plan approval letter shall be filed within sixty days of the adoption of this rule, or within thirty days of an owner's receipt of such letter, whichever is later.*

In addition to the above deletions, section 4.505 has been retitled to remove duplicative section names. Section 4.524(B)(1) has also been updated. This provision provided a deadline for initial safety inspection reports based on the "effective date" of the rule, January 8, 1990. The provisions have been updated to replace the "effective date" language with the actual effective date of the original rule, January 8, 1990, to ensure that the initial report requirements are not reactivated by adoption of the amended rule.

Along with this letter, I am also submitting a second revised redline and clean version of the final proposed Rule 4.500 reflecting the changes. Please let me know if you have any questions. We look forward to discussing proposed Rule 4.500 at the upcoming April 6, 2023, meeting of LCAR.

Sincerely,



Micah Howe