

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by and among the Vermont Public Service Department (PSD), the Vermont Agency of Natural Resources (ANR), and the Vermont Agency of Commerce and Community Development, Division for Historic Preservation (ACCD), (collectively referred to hereinafter as "the Parties").

Purpose/Rationale for Agreement:

1. Act 165 of the 2011-2012 Vermont General Assembly directs the Commissioner of the Vermont Public Service Department (PSD), in consultation with the Secretary of the Vermont Agency of Natural Resources (ANR), to seek to enter into an MOU with the Federal Energy Regulatory Commission (FERC) for a program to expedite the procedures for FERC's granting of approvals for hydropower projects in Vermont that constitute small conduit hydroelectric facilities, small hydroelectric power projects, and, possibly, minor water projects (as defined by 18 C.F.R. § 4.30).
2. In the Fall of 2012, staff from PSD and ANR began discussions on how to implement Act 165. Because of the significant role played by the ACCD in the hydroelectric licensing process, staff from ACCD was also included in these discussions.
3. FERC has responsibility for issuing hydropower licenses under Part I of the Federal Power Act, 16 U.S.C. §§ 791a *et seq.*, for non-federal hydropower projects. This licensing authority includes two exemptions from the licensing provisions of Part I of the Federal Power Act – one for small conduit hydroelectric facilities (conduit exemption) and one for small hydroelectric projects (5 MW exemption). In issuing licenses and exemptions, FERC has responsibilities under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*; Fish and Wildlife Coordination Act of 1934, as amended, 16 U.S.C. §§ 661 *et seq.*; Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 *et seq.*; and Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§ 470f *et seq.*; and other relevant environmental and cultural protection statutes.
4. FERC has regulatory authority over dam safety under the Federal Power Act, as amended, 16 U.S.C. §§ 792-828C.
5. In implementing its licensing responsibilities, FERC must consider the recommendations of state resource agencies, i.e., those agencies exercising administration over flood control, navigation, irrigation, recreation, and cultural and other relevant resources of the state in which the project is located per 16 U.S.C. § 803(a).
6. In Vermont, ANR and ACCD are state resource agencies that are regularly called upon to make recommendations relied on by FERC in implementing its licensing responsibilities.
 - a. ANR exercises administration over public waters and fish and wildlife pursuant to Title 10 (Conservation and Development) and Title 29, Chapter 11 (Management of Lakes and Ponds) of Vermont Statutes Annotated. Further, Section 401 of the Clean Water Act, 33 U.S.C. § 1341, provides that a federal license or permit to conduct any activity that may result into a discharge into waters of the United States cannot be issued until the state

- certifies that the activity conforms with Sections 301, 302, 303, 306 and 307 of the Clean Water Act. Under 10 V.S.A. § 1004, ANR is the state certifying agency.
- b. ACCD exercises administration over historic and archaeological resources pursuant to Title 22 of Vermont Statutes Annotated. ACCD also implements section 106 of the National Historic Preservation Act for Vermont, which requires Federal agencies to take into account the effects of their undertakings on historic and archaeological properties.
7. Vermont studies have identified a range of developable hydropower sites and generation potential in Vermont.
- a. In 2006, the federal Department of Energy identified 1,291 potential sites with a combined capacity of 434 MW.
 - b. In 2007, the Vermont Public Service Department identified 300 potential sites (out of 1,200 existing dams) with a combined capacity of more than 90 MW.
 - c. In 2008, the Vermont Agency of Natural Resources identified 44 potential sites with a combined capacity of 25 MW, most of which are smaller than 5 MW.
8. These projects have the potential to contribute to Vermont's renewable energy mix, to help meet Vermont's Comprehensive Energy Plan goal of 90% renewable energy across all energy sectors by 2050, and to create related business opportunities while reducing greenhouse gas emissions that contribute to climate change. In addition, they would contribute to meeting the following statutory goals:
- a. By 2022: 127.5 MW of new *in-state* renewable *electric* generation contracts provided through the Standard Offer program of SPEED (30 V.S.A. § 8005a(c))
 - b. By 2025: 25% of all energy from *in-state* renewables (10 V.S.A. § 579(a))
 - c. By 2028: 50% reduction in greenhouse gas emissions; 75% by 2050 (10 V.S.A. § 578(a))
 - d. By 2032: 75% renewables in electric sales (30 V.S.A. § 8005(d)(4)(A))
9. The Parties, in seeking to implement Act 165, and after consultation with FERC, have concluded that increasing state inter-agency cooperation and coordination in reviewing potential hydropower projects, as well as assisting developers of low-impact hydropower in understanding the hydropower permitting process at the state and federal levels, are the two most meaningful and potentially effective actions that can be undertaken at the state level to facilitate low-impact hydropower project development in the state.

Terms of Agreement:

10. The Parties do hereby agree to work together to assist low-impact hydropower projects navigate the process at FERC for seeking a 5 MW or conduit exemption, while maintaining the high level of protection afforded to natural and cultural resources by federal and state laws and regulations. In doing so, the Parties will focus on identifying and assisting those low-impact projects that have a significant public value, such as projects owned by public entities and projects utilizing existing infrastructure. Such assistance will be intended to aid FERC applicants in their development and submittal of complete applications to FERC. Such assistance will also intend to make the state certification component of the FERC application process as efficient

and transparent as possible. Subject to available resources, such assistance may include the following:

- a. Designation of a point person at each agency who will be responsible for providing assistance to developers of low-impact hydropower projects.
- b. Coordination of interagency site visits for potential FERC applicants in order to assess potential projects and apprise potential applicants of issues that will need to be addressed in the application process.
- c. Provision of informational materials to assist hydropower developers.
- d. Coordination and continued engagement with FERC in this process to ensure state actions and policies will be useful in developing better applications and will be complementary to the FERC process.

On behalf of the Vermont Public Service Department



Commissioner Christopher Recchia

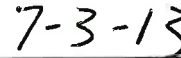


Date

On behalf of the Vermont Agency of Natural Resources



Secretary Deb Markowitz



Date

On behalf of the Vermont Agency of Commerce & Community Development



Secretary Lawrence Miller



Date

Witness: 