

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Proposed revisions to Vermont Public Utility)
Commission Rule 4.500 on the Safety of) Case No. 22-4420-RULE
Hydroelectric Dams)

VERMONT INDEPENDENT POWER PRODUCERS ASSOCIATION
REQUEST PURSUANT TO 3 VSA § 840

On December 2, 2022, the Vermont Independent Power Producers Association (“VIPPA”) provided detailed comments on the proposed revisions to Vermont Public Utility Commission (“Commission” or “PUC”) Rule 4.500, requesting the Commission to modify the Rule to clarify that its scope does not apply to nonfederal dams subject to Federal Energy Regulatory Commission (“FERC”) licensing or exemption. VIPPA commented that in recognition of FERC’s governing role, Vermont’s Dam Safety Law, 10 VSA Ch. 43, and in particular, 10 VSA § 1081 (“Jurisdiction of Department [of Environmental Conservation] and Public Utility Commission”) expressly excludes from PUC and Vermont Department of Environmental Conservation (“DEC”) jurisdiction of the regulation of dams subject to FERCs licensing authority under the FPA:

§ 1081. Jurisdiction of Department and Public Utility Commission

(a) Powers and duties. Unless otherwise provided, the powers and duties authorized by this chapter shall be exercised by the Department, except that the Public Utility Commission shall exercise those powers and duties over nonfederal dams and projects that relate to or are incident to the generation of electric energy for public use or as a part of a public utility system. *Nonfederal dams at which the generation of electric energy is subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1, shall not be under the jurisdiction of the Public Utility Commission.*

10 VSA 1081(a)(emphasis added). Therefore, any nonfederal dam located in Vermont that is subject to FERC licensing is not subject to the jurisdiction of the Commission.

FERC’s preemptive authority is also recognized in Vermont’s electric generation siting statute, 30 VSA § 248, which excepts from the Commission’s siting authority jurisdiction over *“hydroelectric generation facilities subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1.”* 30 VSA § 248(a)(3)(emphasis added).

DEC's Dam Safety Rule similarly states that it does not apply to dams licensed by the
FERC:

§37-105 Applicability

This rule shall apply to non-federal, non-power dams in the State of Vermont under jurisdiction of the Agency of Natural Resources, Department of Environmental Conservation (the Department). It applies to dam registration, classification, inspection, application and approval to construct, re-construct, alter, repair, breach, or remove a dam, as well as related standards including design standards, operation and maintenance standards, inspection standards, and Emergency Action Plans. ***This rule shall not apply to dams owned and operated by the United States government or dams subject to a Federal Energy Regulatory Commission license or exemption (power and/or federal dams), or dams under the jurisdiction of the Vermont Public Utility Commission (power dams).***

<https://dec.vermont.gov/water-investment/dam-safety/dam-safety-statute-and-rules> (emphasis added).

Before the Commission adopts a final proposed Rule 4.500, VIPPA respectfully requests the Commission, pursuant to 3 V.S.A. § 840, to modify the Rule to reflect the limits of the Commission's jurisdiction as outlined in VIPPA's comments or, if it fails to do this, explain the reason for its decision not to so modify the Rule.¹

¹ 3 VSA 841 provides in relevant part:

(1) *With the final proposal, the agency shall include a statement that succinctly and separately addresses each of the following:*

(A) *how the proposed rule is within the authority of the agency ... (2) When an agency decides in a final proposal to overrule substantial arguments and considerations raised for or against the original proposal or to reject suggestions with respect to separate requirements for small businesses, the final proposal shall include a description of the reasons for the agency's decision.*

(emphasis added).

DATED at Burlington, Vermont, this 24th day of February, 2023.

Respectfully submitted,

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