

No. 165. An act relating to expediting development of small and micro hydroelectric projects.

(S.148)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds:

(1) The existing policy of the state of Vermont is to promote development and use of renewable energy projects, including hydroelectric projects.

(2) Additional capacity exists for development of hydroelectric projects in Vermont, with estimates ranging from 25 megawatts (MW) to 434 MW. The Comprehensive Energy Plan issued in December 2011 by the department of public service (DPS) states in Sec. 5.8.2.1.1:

Opinions differ on the amount of available hydropower that is available in Vermont. Depending on assumptions used, reports vary from 25 MW at 44 sites (estimated by the ANR [agency of natural resources] in 2008) to 434 MW at 1,291 sites (estimated in a DOE [Department of Energy] study in 2006). A 2007 study for the DPS identified more than 90 MW developable at 300 of the existing 1,200 existing dams.

(3) In a report to the general assembly entitled “The Development of Small Hydroelectric Projects in Vermont” (Jan. 9, 2008) at p. 19, ANR states

that most hydroelectric projects in Vermont are smaller than five MW in capacity.

(4) Most hydroelectric projects require approval from the Federal Energy Regulatory Commission (FERC). The length and cost of the process of obtaining a FERC approval do not vary significantly with the capacity of the hydroelectric project. However, the ability of a hydroelectric project to absorb this cost decreases as the capacity of the project grows smaller.

(5) A FERC approval of a hydroelectric project may be in the form of a “license” for a limited term that is not to exceed 50 years and that may be renewed. The majority of the over 1,700 hydroelectric projects regulated by FERC are subject to limited term licenses. These licenses can apply to large hydroelectric projects such as the 15 Mile Falls Hydroelectric Project on the Connecticut River (291 MW) and to small projects such as the Gilman Dam on the Black River in Vermont (0.125 MW). Licensed projects may include “minor water power projects,” which FERC defines as any existing or proposed water power project that would have a total installed generation capacity of 1.5 MW or less.

(6) A FERC approval of a hydroelectric project may be in the form of an “exemption,” under which the project is exempted from some requirements of the Federal Power Act, including the limited term, but there is still an extensive application and environmental review process. These exemptions

therefore are approvals in perpetuity. There are two classes of hydroelectric license “exemptions” granted by FERC:

(A) Small hydropower projects, which are five MW or less, that will be built at an existing dam, or projects that utilize a natural water feature for head or an existing project that has a capacity of five MW or less and proposes to increase capacity.

(B) Conduit exemptions for generating capacities of 15 MW or less for nonmunicipal and 40 MW or less for a municipal project. The conduit must have been constructed primarily for purposes other than power production and be located entirely on nonfederal lands. In this context, “conduit” refers to a human-made water conveyance (e.g., an irrigation canal).

(7) In August 2010, FERC and the state of Colorado, through its energy office, entered into a memorandum of understanding “to streamline and simplify the authorization of small-scale hydropower projects.”

(8) In Vermont:

(A) The state energy office is the department of public service, which among other duties advances state energy policy pursuant to the direction provided by statute.

(B) The main agency engaged in environmental regulation is the agency of natural resources (ANR), the duties and expertise of which include science-based analysis of the impacts of projects on water quality, fish, and

wildlife. When a FERC license or exemption is sought for a hydroelectric project in Vermont, ANR reviews the project and determines whether to issue a certification under the Clean Water Act, 33 U.S.C. § 1341, that the project will not violate water quality standards adopted under that act.

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL

HYDROELECTRIC PROJECTS

(a) In consultation with the secretary of natural resources (the secretary), the commissioner of the department of public service (the commissioner) shall seek to enter into a memorandum of understanding (MOU) with the Federal Energy Regulatory Commission (FERC) for a program to expedite the procedures for FERC's granting approvals for projects in Vermont that constitute small conduit hydroelectric facilities and small hydroelectric power projects as defined in 18 C.F.R. § 4.30 (the MOU program). The commissioner also may seek to include minor water power projects, as defined by 18 C.F.R. § 4.30, in the MOU program. By July 15, 2012, the commissioner shall initiate with FERC the process of negotiating this MOU.

(b) In negotiating and entering into an MOU under this section, the commissioner in consultation with the secretary shall offer and agree to prescreening by the state of Vermont of hydroelectric projects participating in the MOU program.

(c) Prior to executing an MOU with FERC under this section, the

commissioner shall submit a copy of the MOU, in its final form as the parties intend to execute it, to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy. The MOU may be submitted electronically to the office of legislative council, which shall distribute it to the members of these committees.

(d) In consultation with the secretary, the commissioner is authorized to sign an MOU under this section on behalf of the department of public service, the agency of natural resources, and other state agencies and departments involved in the review of proposed hydroelectric projects in Vermont.

(e) No later than January 15, 2014 and annually by each second January 15 thereafter, the commissioner shall submit a written report to the general assembly detailing the progress of the MOU program, including an identification of each hydroelectric project participating in the program. After five hydroelectric projects participating in the program are approved and commence operation, reports filed under this subsection shall evaluate and provide lessons learned from the program, including recommendations, if any, on how to improve procedures for obtaining approval of micro hydroelectric projects (100 kilowatts capacity or less). The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be submitted under this subsection.

(f) As necessary and appropriate, the commissioner and the secretary shall

seek funding from available sources to support the MOU program under this section. Inception of the MOU program shall not be contingent on receipt of such funding.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

Approved: May 14, 2012