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Dr. Helen Locher
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Dear Dr. Locher:

This letter represents comments from the National Hydropower Association (NHA) in response to the draft Sustainability Assessment Protocol (Protocol) developed by the Hydropower Sustainability Assessment Forum (Forum) and put forth for comments by the International Hydropower Association (IHA). NHA applauds IHA and the Forum for its initiative and efforts to develop a broadly endorsed sustainability assessment tool to measure and guide performance in the hydropower sector. NHA appreciates the opportunity to comment on the draft protocol.

The Protocol, as proposed, encourages consideration of a broad range of sustainability issues associated with development and continued operation of a hydropower project. This is particularly valuable in jurisdictions that lack significant depth in legal and regulatory processes associated with natural resource, cultural, societal, occupational safety and corporate conduct. However, the hydroelectric industry in the United States operates in an environment where regulatory oversight and stakeholder considerations are mature and extensive throughout the entire lifecycle of a hydroelectric project (permitting, design, review, construction and operation). While aiming for global applicability, the Protocol fails to sufficiently recognize the extensive U.S. regulatory and legal environment already in place and therefore lacks practical applicability in this country.

In general terms, the Protocol focuses on aspects of sustainability that are already adequately represented and regulated pursuant to U.S. law. Thus hydropower facilities operating or licensed under the U.S. regulatory environment would or should qualify as "sustainable best practices". NHA suggests that current licensing and relicensing processes together with the network of other federal and state laws programs create a regulatory environment stringent enough to obviate the need for the audit process within the Protocol, which would be redundant of the framework already in place in the U.S. Indeed, U.S. hydropower operations, as regulated by U.S. law, should represent "proven best practices" as characterized in the Protocol based upon the summary descriptions of each Aspect. However, upon closer examination of each Aspect's "auditing guidance notes" or relevant context and

scale considerations, it is less clear how well U.S. hydropower projects would score in terms of "good or proven best practice" as defined.

As a general observation, it is NHA's opinion that the Protocols have a greater and more meaningful role to play in jurisdictions where less regulatory oversight and licensing have been established.

To that end, NHA makes the following general comments:

1. It is difficult to assess the practicality of the lengthy and intense auditing process when it is unclear how the protocols will be utilized by regulators, resource agencies, key stakeholders and financiers. As it stands now, this complex evaluation process seems to provide little incremental value to the U.S. hydroelectric industry:
    a. U.S. laws and regulations affecting the industry require consideration of most of the 39 listed Aspects in the draft Protocol.
    b. The maturity of these laws and regulations when applied to a hydroelectric facility should generally score Level 4 or Level 5 – representing proven best practices, when scored on the various attributes related to process and performance.
    c. While the Aspects in general are consistent with requirements found in U.S. regulatory jurisdictions, the detailed descriptions, auditing guidance notes or prescriptions do not adequately consider a U.S. national context.

2. In order for the Protocol to adequately assess a project in the U.S., the following concerns must be addressed and specified in the program:

    a. The audit team must be very familiar and experienced in the regulatory processes associated with development, siting, permitting, construction and operation of hydroelectric facilities in the U.S. At a minimum, knowledge and familiarity with the broad range of U.S. laws and requirements affecting the industry including but not limited to the Federal Power Act, Federal Energy Regulatory Commission rules and policies, National Environmental Policy Act, Clean Water Act, National Historic Preservation Act, Occupational Safety and Health Administration, Sarbanes-Oxley Act, and Endangered Species Act.
    b. Each of the 39 Aspects should recognize national context (and all the laws and regulations that go with such) as a critical relevant consideration for appropriate auditing. For example, in the U.S., 27 Aspects are specifically regulated in one manner or another and therefore the audit should be familiar with what is required under such regulations. The auditor should strongly consider the regulatory review process or compliance requirements themselves and examine the project development, construction or operation in terms of complying with such rules and processes.

3. Because the U.S. hydroelectric industry consists largely of existing operating facilities, an appropriate application of establishing baseline conditions, referenced throughout the Protocol must be made.

a. There must be flexibility in defining baseline conditions, recognizing the fact that there is a distinction between existing and new projects.
b. Adequate recognition of pre-hydroelectric project legacy issues or conditions must also be recognized and not solely assessed as an impact or attribute associated with a hydropower development where prior causal factors are involved.

4. The Auditing Procedure should specify that the auditor perform both a project-specific and a host-nation-specific "Aspect or Attribute Relevance" determination up front, before all else. The host- nation-specific assessment should at a minimum consider:
    a. National strategic energy goals;
    b. Strategic energy planning;
    c. Political risk associated with hydro development;
    d. Regulatory process surrounding development, from planning and design through construction, operation and maintenance.

    This assessment could lead to a more refined set of Aspects to consider than those listed in the Aspect Relevance Guides found in the beginning of each Section. For example, an assessment of Political Risk in Section 1 is less critical when considering a project in the U.S.

5. When evaluating Aspects within the Financial and Economic Perspectives group, there needs to be a greater recognition as to the purpose of such an assessment. For example, there are different concerns associated with a privately funded development versus a public financed project or an international development loan. An audit of these perspectives must be carried out while being respectful of confidential information or competitive market strategies that support the development.

6. Scoring Performance Attributes appears to rely on subjective determinations. Some questions arise, including:
    a. How would Comprehensive Settlement Agreements, which are largely supported in the U.S. as a viable strategy to reach reasonable mitigation and future operational constraints, be considered by the Protocol?
    b. Will an audit team parse a Settlement Agreement on a resource-by-resource basis or consider it holistically on the basis of it being the best compromise for all who participated and sat "at the table"?
    c. How will it consider "outlier" stakeholders who deliberately choose not to engage or marginally participate and remain uncommitted?
    d. With respect to scoring Level of Compliance or Level of Conformance with Plans, both attributes seem to be an unnecessary duplication of the current oversight role of the Federal Energy Regulatory Commission (FERC) currently. Is the intent that the audit team would simply review and make an independent determination regarding FERC license compliance?
    e. Measurement of the Level of Effectiveness as the degree to which the Aspect intent has been met seems very subjective and could potentially serve to "raise the bar" on a previously agreed upon mitigation measure. It presumes all

Aspects have an agreed upon performance expectation. If the intent has been to meet one's compliance requirements, is this somehow intended to go beyond what was required and encourage something more? Accordingly, the scoring seems to reward anything required by agency authority (even if not particularly effective) with a middle score of 3.

In summary, for the Protocol to be effective and applicable to the U.S. hydropower industry, it must:

- Be practical and reflect existing regulatory and legal requirements without duplication and re-consideration of many issues;
- Rely on knowledgeable, experienced Auditors who can associate U.S. laws and regulation with Aspects and attributes at the detailed level;
- Rely on more concrete principles or parameters associated with compliance with U.S. laws and regulation;
- Focus on issues that are within the discretion of project developers or plant operators;
- Recognize that U.S. hydropower facilities operating or licensed under the U.S. regulatory environment would or should qualify as "sustainable best practices" based upon the mature regulatory framework surrounding hydroelectric development in the U.S.

The use and value of the IHA Sustainability Assessment has yet to be defined or implemented but one can imagine various possibilities. On one hand it could be used in a voluntary manner, essentially providing a certification label for marketing and promotional purposes; it could be used to secure funding, and it might become an integral component, if not a requirement, under a renewable energy or carbon emission reduction scheme. As part of a voluntary certification program for sustainable hydropower, the Protocol may have additional value to project owners and operators, if worthy of the effort and expense associated with it. However, the prescriptive nature of the Aspects, Attributes and scoring, all based on the subjective interpretation of an auditor, without specific qualifications, renders the Protocol extremely problematic for NHA if it acts as an additional "regulatory" threshold applied to renewable energy and carbon reduction policies in the U.S**.**

NHA applauds the IHA and the Forum on their efforts to date, however, too many questions remain (both at the logistical level and in terms of applicability) for NHA to support the Protocol at this time.

Sincerely,

Linda Church Ciocci
Executive Director