



July 17, 2014

Steven Lindenberg
Office of Energy Efficiency and Renewable Energy
United States Department of Energy
1000 Independence Avenue, SW, Washington, D.C. 20585-0121

RE: EAct Section 242 Guidance for Hydroelectric Incentive Payments

Mr. Lindenberg,

On Wednesday, July 2, the U.S. Department of Energy's Office of Energy Efficiency & Renewable Energy (EERE) invited comments on draft Guidance for implementing Section 242 of EAct 2005 (Guidance), the Hydroelectric Incentive Program (HIP). The National Hydropower Association (NHA)¹ is pleased to submit the following comments on the Guidance.

NHA is guided by two overarching goals when commenting on incentive programs such as the HIP and its implementation. First, NHA advocates for the greatest benefit to as many of our member companies as possible, which includes both financial benefits and the opportunity to expand hydropower development and generation. Second, NHA strives for certainty and consistency in the administration of any incentive program.

I. Substantive Comments

In reviewing the Guidance, NHA focused on the interpretation of the organic statute and its applicability to a broad population of hydropower asset owners and developers. Therefore, our comments are focused on recommendations that will result in broad program applicability, eligibility, and certainty. NHA submits the following comments, which are keyed to the specific sections in the Guidance.

¹ NHA is a national non-profit association dedicated exclusively to advancing the interests of the U.S. hydropower industry, including conventional, pumped storage, and new marine and hydrokinetic technologies. NHA's membership consists of more than 180 organizations, including consumer-owned utilities, investor-owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants, and attorneys

A. Definitions

Existing Dam or Conduit

- In the proposed definition for Existing Dam or Conduit EERE included the following additional sentence, “An increase in dam height, expansion of reservoir topographic area or expansion of conduit cross section after the date of enactment of EAct 2005 would eliminate facilities from eligibility for the hydroelectric production incentive.” NHA believes this proposed addition is over expansive and may unnecessarily restrict program eligibility.

As one example, some new projects utilizing an existing dam or conduit may employ temporary diversions or experience a temporary enlargement of an impoundment during the construction of the hydropower generating facility only to revert to pre-construction conditions once completed. These facilities should not be deemed ineligible under the HIP for accomplishing the exact outcome the incentive was put in place to support – addition of new hydropower generation facilities. As such, NHA recommends this language be deleted.²

- NHA requests clarification of whether “existing dam” includes both existing hydroelectric facilities and non-powered dams. NHA believes the statute intended to incentivize both. Hydropower projects fall into several categories that arguably should be considered eligible for purposes of receiving HIP awards for producing new electric generation, but the Guidance is not clear as to whether new turbines or other generating devices added to existing facilities are eligible. For example, would a new low-flow unit added to an existing facility to capture excess flow or tail water be eligible under the HIP? Similarly, would turbine replacement at an existing facility be eligible under the HIP?

² NHA notes that the EAct Section 242 eligibility language regarding impoundments and diversion structures was similar to the production tax credit (PTC) eligibility language for adding hydropower generation to non-powered dams under Section 1301 of the law. EAct 2005 was the first time hydropower became eligible under the PTC. However, in 2008, the Congress amended the PTC non-powered dams language, deleting the reference to impoundments and diversion structures, with the passage of H.R. 1424, the Emergency Economic Stabilization Act of 2008, signed by the President on October 3, 2008. NHA highlights this point for the DOE to consider as it implements the HIP program and as a potential alternative.

Qualified Hydroelectric Facility

- The proposed definition for Qualified Hydroelectric Facility is narrower in scope than what was included in the statute and unnecessarily restricts program eligibility. Specifically, NHA questions why EERE added the following additional requirement to the definition, “equipment shall be recognized as an electric generator in common application and obtained from a manufacturer with warranty and maintenance schedule for the planned operations.” NHA recommends deleting this language.

The “common application” requirement contradicts the intent of the phrase “other generating device” which contemplates a broad range of technologies and applications, including the use of new and innovative technologies, the very same technologies in which EERE has invested federal R&D dollars.

EERE’s proposed language also attempts to infuse an element of decision making on the front-end of the process when potential applicants are making business decisions based on current markets or available financing. The HIP is a production incentive, and kilowatt hours produced should be the focus of eligibility, not whether the generating device is in common application. Project developers understand the risks involved in selecting their generating device and so long as kilowatt hours are being produced and verified the Guidance should remain neutral on the generating device used and whether the device is in common application.

Alternatively, if EERE chooses to retain the proposed language, how will “common application” be determined, what are the factors that will be considered, and who will make the decision on whether the factors are met? Further, common application should include application within the hydropower industry as a whole, whether applied in the U.S. or international marketplace.

- NHA recommends deleting the last sentence in the proposed definition, “Construction should not require any enlargement of impoundment or diversion structure when installed”, as this language is already included in the definition of existing dam or conduit.

Sale

- NHA requests clarification of EERE’s definition of “Sale”, defined as, “...a transfer of currency between two unrelated parties in exchange for delivered electrical current.” It is foreseeable that some applicants will be public power entities, cooperatives or municipalities whose members sell electricity to their member distributors, which could be interpreted as selling to related parties and therefore ineligible for HIP payments. Can EERE clarify its approach in such situations?

Catchall Paragraph

- NHA questions EERE’s policy that the definitions contained in the Guidance are “not appealable in regard to decisions made by DOE.” NHA recommends DOE to reconsider this position as it restricts future interpretation of the statute and the Guidance.

B. Eligible Applicants and Facilities

- EERE’s Guidance requires the “written consent of the owner” in order to apply for the incentive payment and we believe this requirement is reasonable in relation to the owner of a qualified hydroelectric facility. However, NHA urges EERE to clarify that the dam or infrastructure ownership is irrelevant under the HIP and that the written consent of the infrastructure owner **is not required** and will not impact program eligibility. Some potential applicants may have developed projects on federal, state or municipally owned infrastructure and clarifying that the consent of the infrastructure owner is not required will ensure that applications are submitted and processed in an efficient and timely manner.
- NHA applauds and strongly supports EERE’s decision to include as eligible under the HIP projects that are both FERC jurisdictional and non-jurisdictional.
- It is clear that one eligibility requirement depends on whether the qualified facility begins operation between October 1, 2005 and September 30, 2015. However, NHA requests clarification on whether applicants are required to submit their original application in the year they become operational? NHA believes that if a project begins operation within the specified

timeframe, they should be able to submit an application during any subsequent year up to 2025 and receive incentive payments, recognizing however, that the applicant would not be eligible for the full 10-year incentive payment window if submitted after 2015.

- Under the “Notify DOE of plans to operate” subsection, we recommend that EERE state that there is an exception to the notification request for 2014 applicants. In future years however, NHA interprets this subsection as voluntary and the failure to submit notification will not result in ineligibility.

C. Application Requirements

- Under *Processing application* subsection 3, NHA fully appreciates that the program is subject to appropriated funds, and we recognize that there is the potential for the program to be oversubscribed resulting in insufficient funds to make full payments to all qualified applicants. NHA believes EERE’s proposed methodology in these situations is reasonable, yet we are also mindful of our goals laid out in the beginning of these comments to maximize the benefit to the industry, both financially and as an incentive for new development. NHA encourages EERE to consider whether other approaches in an oversubscribed situation may result in greater benefits with these goals in mind.

II. Conclusion

NHA appreciates the opportunity to provide comments on the Guidance and we commit to working with EERE on implementation of the HIP program in the future. Financial incentives such as the HIP are important to the industry and help deflect the high regulatory, licensing, permitting and construction costs associated with building hydroelectric facilities. As such, NHA strongly encourages EERE to include in its future budget requests continuing and robust support for the HIP program.

Finally, NHA encourages EERE to conduct a review and solicit comment on the Guidance and implementation of the program after experience has been gained. It would benefit both EERE and the industry to have the opportunity to make revisions to the HIP based on any lessons learned.

NHA recognizes that some of our members companies are filing comments on the Guidance and we direct your attention to those comments.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Church Ciocci".

Linda Church Ciocci
Executive Director
National Hydropower Association