

**30 V.S.A. § 8005a (p)**

(p) Existing hydroelectric plants. Notwithstanding any contrary requirement of this section, no later than January 15, 2013, the Commission shall make a standard offer contract available to existing hydroelectric plants in accordance with this subsection.

(1) In this subsection:

(A) "Existing hydroelectric plant" means a hydroelectric plant of five MW plant capacity or less that is located in the State, that was in service as of January 1, 2009, that is a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292, and that does not have an agreement with the Commission's purchasing agent for the purchase of its power pursuant to subdivision 209(a)(8) of this title and Commission rules adopted under subdivision (8). The term includes hydroelectric plants that have never had such an agreement and hydroelectric plants for which such an agreement has expired, ~~provided that the expiration date is prior to December 31, 2015.~~

(B) "LIHI" means the Low-Impact Hydropower Institute.

(2) The term of a standard offer contract under this subsection shall be 10 or 20 years, at the election of the plant owner.

(3) Unless inconsistent with applicable federal law, the price of a standard offer contract shall be ~~the lesser of the following:~~

~~(A) \$0.08 per kWh, adjusted for inflation annually commencing January 15, 2013 using the CPI; or~~

(B) The sum of the following elements:

(i) a two-year rolling average of the ISO New England Inc. (ISO-NE) Vermont zone hourly locational marginal price for energy;

(ii) a two-year rolling average of the value of the plant's capacity in the ISO-NE forward capacity market;

(iii) the value of avoided line losses due to the plant as a fixed increment of the energy and capacity values;

(iv) the value of environmental attributes, including renewable energy credits; and

(v) the value of a 10- or 20-year contract.

(4) The Commission shall determine the price to be paid under this subsection (p) no later than January 15, 2013.

(A) Annually by January 15 commencing in 2014, the Commission shall recalculate and adjust the energy and capacity elements of the price under subdivisions (3)(B)(i) and (ii) of this subsection (p). The recalculated and adjusted energy and capacity elements shall apply to all

contracts executed under this subdivision, whether or not the contracts were executed prior to the adjustments.

(B) With respect to the price elements specified in subdivisions (3)(B)(iii) (avoided line losses), (iv) (environmental attributes), and (v) (value of long-term contract) of this subsection (p):

(i) These elements shall remain fixed at their values at the time a contract is signed for the duration of the contract, except that the Commission may periodically adjust the value of environmental attributes that are applicable to an executed contract based upon whether the plant becomes certified by LIHI or loses such certification.

(ii) The Commission annually may adjust these elements for inclusion in contracts that are executed after the date any such adjustments are made.

~~(5) In addition to the limits specified in subdivision (3) of this subsection (p), in no event shall an existing hydroelectric plant receive a price in one year higher than its price in the previous year, adjusted for inflation using the CPI, except that if a plant becomes certified by LIHI, the Commission may add to the price any incremental increase in the value of the plant's environmental attributes resulting from such certification.~~

(6) Once a plant owner has executed a contract for a standard offer under this subsection (p), the plant owner shall continue to receive the pricing terms agreed on in that contract regardless of whether the Commission subsequently changes any pricing terms under this subsection.

(7) Capacity of existing hydroelectric plants executing a standard offer contract under this subsection shall not count toward the cumulative capacity amount of subsection (c) of this section.

(q) Allocation of regulatory costs. The Commission and Department may authorize or retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, and research services in conjunction with implementing their responsibilities under this section. In lieu of allocating such costs pursuant to subsection 21(a) of this title, the Commission or Department may allocate the expense in the same manner as the Standard Offer Facilitator's costs under subdivision (1)(1) of this section.

(r) State; nonliability. The State and its instrumentalities shall not be liable to a plant owner or retail electricity provider with respect to any matter related to the Standard Offer Program, including costs associated with a standard offer contract or any damages arising from the breach of such a contract, the flow of power between a plant and the electric grid, or the interconnection of a plant to that grid. (Added 2011, No. 170 (Adj. Sess.), § 4, eff. May 18, 2012; amended 2013, No. 34, § 20; 2015, No. 56, § 4; 2015, No. 97 (Adj. Sess.), § 62; 2015, No. 174 (Adj. Sess.), § 12a.)