

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule 4.500 Safety of Hydroelectric Dams

_____ s/ Anthony Roisman _____, on 02/27/23
(signature) (date)

Printed Name and Title:

Anthony Z. Roisman, Chair
Vermont Public Utility Commission

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Rule 4.500 Safety of Hydroelectric Dams

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P 036

3. ADOPTING AGENCY:

Vermont Public Utility Commission

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Micah Howe

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street, Montpelier, VT 05620

Telephone: (802) 238-2358 Fax:

E-Mail: micah.howe@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://puc.vermont.gov/about-us/statutes-and-rules>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Elizabeth Schilling

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street, Montpelier, VT 05620

Telephone: (802) 828-2358 Fax:

E-Mail: elizabeth.schilling@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

30 V.S.A. § 2(c); 10 V.S.A. § 1081

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Section 2(c) of Title 30 of the Vermont Statutes Annotated allows the Vermont Public Utility Commission ("Commission") to initiate rulemaking proceedings on issues within its jurisdiction. Section 1081 of Title 10 of the Vermont Statutes Annotated gives the Commission jurisdiction 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.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The proposed revisions to Commission Rule 4.500 (Safety of Hydroelectric Dams) update the hazard classification definitions and assessment guidance for dams within the Commission's jurisdiction to coordinate with the definitions and assessment guidance in the Agency of Natural Resources' ("ANR") Dam Safety Rule (20P006), adopted August 1, 2020.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The Commission and ANR have split jurisdiction over dams in the State. The Commission has jurisdiction over non-federal power producing dams, while ANR has jurisdiction over non-power producing and state-owned dams. On August 1, 2020, ANR adopted its Dam Safety Rule as required by Act 161 of 2018. Like Commission Rule 4.500, ANR's rule categorizes dams under its

jurisdictions using hazard classifications that, among other things, dictate the safety inspection frequencies required for the dams. On February 11, 2022, the State Auditor released a report on ANR's dam safety program, noting a discrepancy between the hazard classification definitions applied by ANR and the Commission. The Auditor recommended that the Commission update the hazard classification definitions in its dam safety rule to match the classifications in ANR's rule, which are more protective of public safety.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The proposed revisions to Commission Rule 4.500 change the hazard classification definitions to match ANR's Dam Safety Rule, resulting in consistent application of hazard classifications to Vermont dams by ANR and the Commission.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Owners of Vermont dams that are subject to Commission jurisdiction.

Members of the public in areas surrounding Commission-regulated dams.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

Although all owners of the 22 Vermont dams under the Commission's jurisdiction will be subject to the revised rule, most will not see any economic impact due to the revised hazard classifications. The proposed revisions could result in four dams under Commission jurisdiction currently classified as "significant" hazards being reclassified as "high" hazard dams. A dam classified as "high" hazard is subject to a safety inspection interval of five years, rather than the 10-year safety inspection interval for "significant" hazard dams. If a dam is reclassified from significant to high hazard, the dam owners will incur inspections costs every five years rather than every 10 years (Green Mountain Power Corporation, Coaticook River Water Power Company, and the Carthusian Foundation).

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 1/17/2023

Time: 02:30 PM

Street Address: <https://meet.goto.com/408610061> OR call
1 (571) 317-3116 and enter Pin # 408-610-061

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

01/25/2023

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Vermont Public Utility Commission

Dam

Hazard Classification

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Rule 4.500 Safety of Hydroelectric Dams

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Log#86-73; 4.500 Safety of Hydroelectric Dams; January 8, 1990, (December 2017, agency name change from Public Service Board).



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: November 14, 2022, virtually via Microsoft Teams

Members Present: Chair Douglas Farnham, Brendan Atwood, Diane Bothfeld, Jared Adler, Jennifer Mojo, John Kessler, Diane Sherman, Donna Russo-Savage, Michael Obuchowski (left at 3:10 PM), Incoming Chair Sean Brown

Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
 - Note: Agency of Administration Chief Operating Officer Sean Brown has been appointed to serve as chair of ICAR effective December 1, 2022.
- Review and approval of minutes from the [October 10, 2022](#) meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-3 to follow.
 - Independent External Review of Health Care Service Decisions, Department of Financial Regulation
 - Rule 4.500 Safety of Hydroelectric Dams, Vermont Public Utility Commission
- Chair Farnham shared his gratitude for his involvement with ICAR as this was his last meeting, and thanked members for their service and the importance of the work of ICAR.
- Next scheduled meeting is December 12, 2022 at 2:00 p.m.
- 3:19 p.m. meeting adjourned.

Proposed Rule: Rule 4.500 Safety of Hydroelectric Dams, Vermont Public Utility Commission

Presented By: Micah Howe

Motion made to accept the rule by Diane Bothfeld, seconded by Brendan Atwood, and passed unanimously with the following recommendations:

1. Economic Impact Analysis #6: Include potential costs or cost range, and frequency.
2. Economic Impact Analysis #7: Include number of inspections to undergo.
3. Environmental Impact Analysis, #4: Expand to include reasoning such as its separately regulated.
4. Environmental Impact Analysis, #9: Incorporate positive impacts.
5. Public Input Maximization Plan: Include virtual option information.
6. Annotated Rule 4.510 (C): Clarify in #8 of the Proposed Filing Coversheet that this would be hazard classifications, guidance, or system assessment.
7. Economic Impact Statement: Review last rate increase information from at least one dam and add to show how it may or may not impact electric rates.

DRAFT

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Rule 4.500 Safety of Hydroelectric Dams

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Owners of Vermont dams that are subject to Commission jurisdiction.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS: