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Subject: Docket No. 03-RPS-1078: RPS Proceeding

Via E-mail
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Implementation of Renewables) Docket No. 03-RPS-1078
Portfolio Standard Legislation (Public) RPS Proceeding
Utilities Code Sections 381, 383.5,)
399.11 through 399.15, and 445; [SB) Notice of Renewables
1038], [SB 1078])) Committee Hearing
_____)

RENEWABLES COMMITTEE HEARING
ON
RENEWABLE PORTFOLIO STANDARD

PHASE 2 IMPLEMENTATION

Supplemental Comments of:

Davis Hydro, LLC.
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Mr Chairman,
Mr. Tutt, and Staff

Please accept these additional comments concerning Question 5 in Appendix A - Small Hydro. They cover additional areas not mentioned in oral and previously submitted comments.

Thank you Mr. Chairman:

Further consideration should be made in the future to bring this legislation in conformance with other applicable state law. Please consider the following two sets of citations. First is the language from the California Water Code and the second from CEQA that demonstrate the State's policy on small hydro.

First, in
Article 7
of Chapter 7 of the California Water Code Titled:
Priority of Applications for Hydroelectric Power:

1490. Applications or petitions for retrofit hydroelectric plants at existing dams, canals, or conduits where the streamflow regime will not be changed and where there will be no significant adverse environmental impacts shall receive expedited processing by the board. The applicant shall not be required to show a need for the power that will be generated by the plant unless protests are filed that are not resolved.

1491. Applications for hydroelectric powerplants with a generating capacity not to exceed five megawatts, which do not impound water during times of high waterflow to be used to generate power during times of low waterflow, and which will not have any significant adverse environmental impacts shall receive expedited processing by the board. The applicant shall not be required to show a need for the power that will be generated by the plant unless protests are filed against the project that are not resolved.

In summary, the California Water Code suggests where possible expedited processing be applied to these retrofit type of projects. CEQA is even more accommodatingly be categorically exempting these projects from the CEQA review Process. Here is the language from the California Environmental Quality Act (CEQA) guidelines:

15328. Small Hydroelectric Projects at Existing Facilities are exempt under Section 8.00.070 Categorical Exemptions : Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where:

- (a) The capacity of the generating facilities is 5 megawatts or less;
- (b) Operation of the generating facilities will not change the flow regime in the affected stream, canal, or pipeline including but not limited to: (1) Rate and volume of flow; (2) Temperature; (3) Amounts of dissolved oxygen to a degree that could adversely affect aquatic life; and (4) Timing of release.
- (c) New power lines to connect the generating facilities to existing power lines will not exceed one mile in length if located on a new right of way and will not be located adjacent to a wild or scenic river;
- (d) Repair or reconstruction of the diversion structure will not raise the normal maximum surface elevation of the impoundment;
- (e) There will be no significant upstream or downstream passage of fish affected by the project;
- (f) The discharge from the power house will not be located more than 300 feet from the toe of the diversion structure;
- (g) The project will not cause violations of applicable state or federal water quality standards;
- (h) The project will not entail any construction on or alteration of a site included in or eligible for inclusion in the National Register of Historic Places; and
- (i) Construction will not occur in the vicinity of any endangered, rare, or threatened species.

Note: Authority cited:

Public Resources Code
Sections 21083 and 21087,
and Section 21084

There are very few exemptions to this code, but small hydro is one. California's intent toward small hydro is clear.

Separate from these, exclusions, There are legitimate concerns about retrofit hydro. State and federal agency review is currently ongoing addressing project on the Feather River as we speak. The FERC licensing process beings in California State concerns and requires the applicant to meet or negotiate all state concerns as part of the licensing process.processes in place.

As written, the RPS legislation precludes all non-irrigation and in-pipe hydro that does not have hydropower currently permitted at a structure. This may not have been its intent. It is clearly against the intent of other carefully considered applicable state law. I request your review, and remain happy to work with staff on suitable language that would meet any other people's concerns.

Respectfully,

Dick Ely,
Davis Hydro, LLC

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