October 28, 2005

TO: LIHI Governing Board

cc: LIHI Advisory Panels
    Gabriela Goldfarb

FROM: Fred Ayer, Executive Director

SUBJECT: Recommendation regarding the application for certification of the Tapoco Hydroelectric Project (FERC License No. 2169)

ISSUE

Should the Governing Board certify the Tapoco Hydroelectric Project on the Little Tennessee River in Blount and Monroe Counties in Tennessee and Graham and Swain Counties in North Carolina as a Low Impact Hydropower Facility?

RECOMMENDATION

The Governing Board should certify the Tapoco Hydroelectric Project, on the Little Tennessee River in Blount and Monroe Counties in Tennessee and Graham and Swain Counties in North Carolina because it meets the Low Impact Hydropower Certification Criteria.

DISCUSSION

I have reviewed the application, and the Application Reviewer’s report. I concur with the Application Reviewer’s determination that the Tapoco Hydroelectric Project meets the Low Impact certification criteria. I also agree with the Application Reviewer’s recommendation regarding the applicant’s assertion that their watershed protection and recreation efforts qualified for the benefit of being certified for three extra years:

“Taken together, the APGI easements, federal land in conservation ownership, shoreline Management Plan, and establishment of the Tennessee and North Carolina funds appear to more than satisfy LIHI’s watershed criteria.”

I therefore recommend that the Board reward the applicant with three extra years of certification based on staff’s sense that the applicant and other parties to the Relicensing process have
provided adequate information to document the assertions that the watershed protection plans warrant the eight year certification term.

I found one issue raised by the Application Reviewer’s report concerning the complexity of the Settlement Agreement that I believe is of particular interest to the LIHI Board. As you know, certified facilities are required to file an annual statement with the LIHI confirming that in the preceding year, there has been no relevant change in conditions, violations of the Low Impact Hydropower criteria or Certification Use Requirements, and no receipt of a relevant notice of violation from a government agency.

To date, LIHI’s practice is to send a compliance form to certified facility managers each year, usually around two weeks prior to the Low Impact facility’s certification anniversary.

While LIHI staff are generally satisfied with the timely response from LIHI certified facilities to LIHI’s annual compliance statement, I believe there is a need for better documentation of compliance with the increase in new licenses with settlement agreements. Starting with the Tapoco Project, I recommend we require that all certified projects that have a settlement agreement as part of their license, file with LIHI copies of annual implementation/compliance reports required by FERC or other relevant agencies. If there are no implementation/compliance reporting requirements by FERC or other relevant agencies, LIHI would require certificate holders to develop and submit implementation/compliance reporting that met LIHI’s needs.

There appear to be no significant issues that conflict with the Settlement Agreement, the FERC License and the Low Impact Criteria.

**Public Comments and Appeal Period**

There was one positive public comment letter. A July 29, 2005 letter to LIHI from an organization representing local homeowners, “The Friends of Lake Santeetlah,” urged LIHI certification of the project, commending both APGI and the parties to the Settlement Agreement for minimizing the project’s “impact… on the area.” LIHI received no other comment letters.