

August 22, 2024

Ms. Shannon Ames, Executive Director  
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**Subject:** Public Comment on Updates to the LIHI Certification Handbook

Dear Ms. Ames:

Brookfield Renewable appreciates the opportunity to offer comments on the draft Handbook revisions. We recognize the work put in by Staff and stakeholders to date and offer these comments in hopes of establishing revisions that reflect understandable and achievable requirements.

In 2016 the Low Impact Hydropower Institute (LIHI) updated its Certification Handbook to exclude for eligibility:

facilities associated with dams that have been formally recommended for removal by a resource agency. If a resource agency has concluded that a dam should be removed and has documented their recommendation in an official, publicly available report or public proceeding, the hydroelectric facilities associated with that dam are not eligible for LIHI Certification.

Part of LIHI's recommended new language for the Handbook includes adding "Tribal Nations" to this section, so that any tribal recommendation of removal effectively renders projects ineligible for LIHI certification.

Brookfield has significant concerns that the bar that either a resource agency or Tribal Nation must meet is extraordinarily low and may carry unintended consequences that will prevent continued Certification of currently qualified projects and may limit additional resources from considering Certification in the future. This can result in counterproductive outcomes whereby projects are no longer incentivized to operate under conditions that would otherwise support LIHI designation.

Systematically making projects recommended for removal ineligible for Certification may have seemed a commonsense stipulation in 2016. The language around the exclusion

assumes a removal recommendation is the result of carefully reasoned policy decision “documented . . . in an official, publicly available report or public proceeding.”

However, over the last eight years relicensing processes—particularly in the northeast—have grown significantly more fraught and subject to political pressures, and even relatively simple projects are now subject to delay and controversy. Calls for dam removal, once limited to a small number of targeted sites, are now thrown about indiscriminately in many if not most relicensing processes.

Further, the criteria detailed in the Handbook around this exclusion is also not as clear as it appears at first blush—even when considering existing Handbook language, rather than the latest proposed changes. For example, assume a fishery agency staffer calls for removal in spoken comments at a public meeting—does this constitute a valid recommendation? Many agencies will extol the benefits of removal in their general comments but usually stop just short of formally recommending removal under Section 10(a) of the Federal Power Act. The National Marine Fisheries Service, for example, regularly asks FERC to analyze dam removal as part of an environmental analysis of a hydroelectric project relicensing—does a request for removal analysis represent a recommendation for removal? While Brookfield Renewable does not believe it is the intent for LIHI to consider anything beyond a formal documented recommendation of removal, further clarity on these points in the Handbook would be useful for all.

Even when agencies or Tribal Nations do recommend removal, the support for this position is usually limited or vague—the justification is considered self-evident. In its August 28, 2020 10(a) recommendations for Brookfield’s Shawmut Project, the Maine Department of Marine Resources “recommends that the Shawmut Project be decommissioned and removed. This recommendation is consistent with multiple comprehensive plans, our management goals and activities, and analysis of river-specific data.” The justification section that follows simply lists relevant comprehensive plans.

The Penobscot Nation calls for dam removal in relicensing processes as a matter of course:

- Mattaceunk Project: “The only hope for our endangered salmon is for the FERC to deny the license and demand removal of that ancient technology and abomination within the PINs reservation . . . Fish passage has proved to be inadequate for restoring runs of diadromous fish on the East Coast of the United States” (May 22, 2017)
- West Enfield Project: “The PIN is in support of dam removal at the West Enfield project” (September 30, 2019); “The PIN believes that the best fishway is a free-

flowing river, and supports the decommissioning and complete removal of the West Enfield project” (January 10, 2020)

- Penobscot Mills Project: “The PIN believes that the best fish passage and the best chance for restoration of the West Branch Penobscot River ecosystems is dam removal for all the projects in this relicensing” (September 13, 2021)

The entire LIHI program is based on the assumption that many, if not most, hydropower projects can be low impact with appropriate mitigation measures in place. However, it increasingly appears that LIHI is providing veto power on Certification to entities that fundamentally believe that no hydropower project can ever be considered low impact.

Many of these entities fully understand the value of LIHI certification and are willing to lean into removal recommendations as a result. In comments on the Shawmut Draft Environmental Assessment the Maine Department of Marine Resources was careful to point out that

FERC Staff should be aware that the Shawmut Project should not be eligible for Low Impact Hydro Institute (LIHI) Certification. When a project achieves LIHI certification, the applicant/dam owner may market the power produced from the facility as coming from a certified Low Impact facility with the expectation they will be able to charge more for electricity generated from the facility. As the Shawmut Project has been recommended for removal by a resource agency it is explicitly ineligible for this certification (August 13, 2021).

Unfortunately, removal recommendations are not always made through careful, deliberative processes. They can be subject to political gamesmanship and are relatively easy for resource agencies or Tribal Nations to make, with significant consequences for hydropower owners. Brookfield respectfully requests that LIHI reconsiders not only the proposed new language but also the current Handbook language around removal recommendations.

Instead, Brookfield Renewable urges more flexibility in these considerations. The proposed binary approach of recommended removal and a resource’s Certification is removed or a path to Certification is denied is highly concerning and counterproductive.

Brookfield also notes that the existing relicensing process provides ample opportunities for Tribal Nations to participate. Further, the federal government has numerous obligations to Tribal Nations through treaty, statute, regulation, and executive order. FERC has a specific tribal consultation policy to ensure Tribal Nations are engaged throughout the relicensing process. Similarly, federal agencies most likely to participate in relicensing processes, including BIA, EPA, NMFS, NPS, USFS, and UFSWS have tribal trust responsibilities.

Similarly, while we appreciate the efforts to include broader stakeholder input, the inclusion of Indigenous-Knowledge-based recommendations as tantamount to science-based recommendations may further limit the portfolio of projects that can achieve LIHI Certification.

We recognize the delicate balance required but urge other opportunities to engage stakeholders more comprehensively than by including standards that may not or cannot be met, even by projects that otherwise have or will be incentivized to implement operating conditions to the benefit of all stakeholders. Instead, to the extent LIHI seeks to expand stakeholder engagement, the Handbook could require that formal recommendations for removal – either those made by agencies or Tribal Governments – result in additional Staff scrutiny of a project’s Application or Certification; however, Staff should be provided the flexibility to either validate such recommendations or to determine LIHI Certification may be maintained.

If there are any questions or comments, please contact me at (323) 400-9175 or at [steven.zuretti@brookfieldrenewable.com](mailto:steven.zuretti@brookfieldrenewable.com)

Sincerely,



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Cc: R. Dorman, D. Bates, K. Bernier, A. Frechette, K. Murphy, J. Seyfried; Brookfield Renewable U.S.