GRANITE STATE HYDROPOWER ASSOCIATION

Energy Stakeholder Forum

Supplemental Comments

June 27, 2006

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Revised Regulations Governing Small Power Production And Cogeneration Facilities	))	**Docket No. RM05-36-000**

COMMENTS OF GRANITE STATE HYDROPOWER ASSOCIATION, INC. REGARDING PROPOSAL TO ELIMINATE FPA EXEMPTION FOR SMALL POWER PRODUCTION FACILITIES

Pursuant to the Notice of Proposed Rulemaking ("NOPR") issued on October 11, 2005 by the Federal Energy Regulatory Commission ("Commission"), the Granite State Hydropower Association, Inc. ("GSHA") hereby files these comments in response to the NOPR respecting the Commission's proposal to eliminate the exemptions granted to small power production facilities from regulation under certain provisions of the Federal Power Act. GSHA submits that the exemptions should remain in place as they have for more than 20 years, especially for projects where there is no utility ownership.

I.

BACKGROUND

GSHA is a volunteer non-profit association organized in 1984 made up of owners and operators of 50 small scale hydroelectric projects located throughout the State of New Hampshire. GSHA was formed to further the development of small scale hydroelectric power within New Hampshire. The median size of the GSHA projects is 400 kW and its members contribute a total of 50 MW of installed capacity in New England. With the exception of one 10 MW project, all of the GSHA projects are 5 MW or less. Members of GSHA are proud of their contributions to clean and renewable electricity within New Hampshire. As small developers, members of GSHA are not affiliated with any utility. They are all qualifying small power

production facilities ("QFs"). These QFs sell their output to utilities in the State of New Hampshire under a variety of contractual mechanisms, including traditional avoided cost contracts or rates tied to a regional market price. Virtually all of the GSHA projects were built or reactivated in the mid 1980s. Because of the prohibitive cost and administrative burdens associated with participation in an RTO, none of GSHA members make sales into the New England ISO.

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In the NOPR, the Commission proposed to amend its regulations, purportedly in response to the issuance of the Energy Policy Act of 2005. The Commission proposes to: (1) make changes to the cogeneration facility qualifying criteria; (2) amend FERC Form 556 to reflect those changes in cogeneration facility qualifying criteria; (3) eliminate ownership limitations for qualifying cogeneration and small power production facilities; and (4) eliminate the exemptions afforded QFs from certain provisions of the Federal Power Act and the Public Utility Holding Company Act of 1935.

GSHA comments today to oppose the Commission's proposal to eliminate the exemptions afforded QFs from certain provisions of the Federal Power Act. While to be sure, the changes made by Congress to eliminate the utility ownership limitations for QF qualification in PURPA require changes to the regulatory scheme of Part 292, these changes do not eliminate the need for exemption from certain provisions of the FPA for all QFs, especially those not owned by utilities and especially small projects. Elimination of the exemption would create

significant and additional regulatory burdens on small project developers with no commensurate benefit to the Commission or its regulatory responsibilities. If, however, the Commission finds it necessary to further limit the availability of this exemption from provisions of the FPA, it should retain the exemption for small power production facilities where there is no utility ownership. In the alternative, the Commission should retain the exemption for small project of a size of 20 MW or less.

II.

STATEMENT OF ISSUES

GSHA supports retaining the exemption from certain provisions of the FPA available to qualifying small power production facilities.

III.

COMMENTS

In its NOPR, the Commission proposes to modify Section 292.601 of the Commission's regulations to eliminate exemptions from Sections 205 and 206 of the FPA, "except for sales that are governed by state regulatory authorities pursuant to Section 210(f) of PURPA."[1] The Commission intends the continued exemption to apply only to sales made at avoided cost rates. For QFs that make market based rate sales, the Commission would require that entity to obtain market based rate authority from the Commission and to comply with all of the filing obligations thereto.[2] The Commission proposes also not to exempt QFs from new provisions of the FPA, including provisions on electric market transparency, making false statements and market manipulation.

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1 NOPR at P 26.

2 NOPR at P 27.

The Commission seeks comment on whether the Commission should eliminate additional sections of the FPA that are granted by the current regulations. This would, for example, subject QFs to Section 204 (issuance of securities) and other provisions that have never been applicable to QFs (other than certain identified facilities).

Recognizing the fact that elimination of exemptions "might create a hardship" for small QFs, the Commission leaves open the possibility that the exemption could be available: (1) to QFs with a capacity of under 5 MW; or (2) to QFs that are independent of traditional utilities, transmission providers and other power producers.[3] The Commission is correct that the elimination of the exemption would create hardship for small QFs.

A. Elimination of the Exemption Will Create Hardship on Small Developers

Elimination of the exemption of QFs from provisions of the FPA will impose additional financial and administrative burdens on the owners of a significant number of small, independently-owned projects without any commensurate improvement in regulatory oversight or benefit to consumers. Both from a policy standpoint and practical standpoint, retaining the exemptions for QFs makes sense.

From a policy perspective, renewable energy should be encouraged. Included in the mix of renewable energy projects is existing, small hydroelectric projects. Yet, small hydroelectric projects in New England are struggling. As long-term QF contracts expire, the rates available to developers are, in some cases, insufficient to justify continued project operations. Several former GSHA members have ceased operating because they were unable to operate economically upon expiration of the original power purchase agreement. Additional members may do the same as their long-term contracts expire or are bought out by the local utility. In

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[3] NOPR at P 28.

short, one of the unintended consequences of deregulation is the reduction of existing renewable resources, especially within New Hampshire and Maine. Requiring additional regulatory burdens will only amplify the financial hardships on these small renewable projects. Increased regulatory burdens associated with FPA regulation could affect adversely the development of new renewable resources as well.

There is no compelling reason to subject small projects to FPA regulation. Small developers, like those in GSHA do not have any ability to influence, either directly or indirectly, financial and electric markets. They cannot exercise market power. In fact, as shown by the Protest filed by GSHA in the Petition of Alliant to remove the mandatory purchase obligation from its transmission owning subsidiaries filed in Docket No. EL05-143-000, small developers cannot participate in ISO/RTO markets due to the burdensome requirements of these entities and the high costs incurred to reach the high voltage facilities (many small developers are interconnected at lower, non-PTF, facilities and must pay wheeling charges in order to access PTF facilities).

From a practical standpoint, if GHSA and other similar projects are subject to regulation under the FPA, the Commission will be inundated with forms and filings for which there is very little use. A cursory look at hydroelectric projects and exemptions under license posted on the Commission's website reveals the sheer number of small developers for which an FPA obligation would apply. For example, in New Hampshire, there are 44 licensed projects. Thirty-eight of these projects are sized at 10 MW or less. Of these 38 projects, only 2 are owned by the incumbent utility, Public Service Company of New Hampshire. There are 43 projects exempt from the licensing requirements, all of which are 5 MW or below, none of which appear to be

owned by utilities. Thus, in New Hampshire alone, at least 80 projects would find themselves subject to Commission rate regulation.

B. The Commission's Proposal to Continue to Exempt Facilities Subject to State Regulatory Authority Is Too Narrow

Under the NOPR, the Commission would continue to exempt QFs which sell electricity pursuant to a state regulatory authority avoided cost ratemaking regime. However, in light of the changing regulatory environment, including the revocation of PUHCA and the Energy Policy Act's changes to PURPA, this protection is problematic and could subject QFs to varying regulatory oversight based solely on the location of the facility. This issue would arise when avoided cost rates are no longer calculated and promoted by states or even on a utility by utility basis. If, for example, a utility is successful in removing the mandatory purchase obligation now afforded QFs under PURPA, the need for the calculation of avoided cost rates is uncertain. As a result, some QFs may be exempt from the FPA and others not.

Moreover, what constitutes an "avoided cost" rate has changed considerably over the years, especially in states with operating regional transmission organizations. When contracts were executed in the 1980s and 1990s, each utility calculated its avoided costs periodically and these rates were posted and available to QFs. That is no longer the case. In New Hampshire and Vermont, for example, the public utility commissions have not formally calculated avoided cost rates for years. Today, QFs typically sell their power to the utility at the locational marginal price ("LMP") rate – a market-based rate. Yet, the rate is an avoided cost rate that is sanctioned by the state for purposes of the sale of power from the QF to the utility. Thus, the Commission should expand its proposal to exempt projects purchasing under avoided cost rate schemes to take into account the evolution and expanded definition of what constitutes an avoided cost rate. Without Commission clarification on this point, as the markets evolve further, the line between

what is an avoided cost rate and what is an "ordinary" market rate may blur, creating further regulatory uncertainty for QFs.

The Commission should also clarify that long-term contracts entered into by QFs and utilities that are based on LMP-based avoided cost rates would qualify for exemption under the Commission's proposal. It is not clear from the NOPR whether and what types of contracts would result in the QF's continued exemption from FPA regulation. Many GSHA members' contracts are expiring within the next few years. These developers, should the rates available be favorable, will want to enter into additional arrangements and must understand the regulatory implications of their future contracting practices. In sum, GSHA supports the continued exemption from identified provisions of the FPA for small power production facilities. Should the Commission narrow the applicability of the availability of the exemption, it should continue the exemption for projects with long-term contracts at rates that are "avoided cost" recognizing the broader definition of "avoided costs" employed today.

If the Commission determines that the evolutionary and broader definition of avoided costs is inapplicable, it is rational and reasonable, but not preferable, to take one of two actions: (1) continue the exemption for all QFs which are independent of traditional utilities and transmission providers; or (2) exempt QFs at 5 MW or less from provisions of the FPA for which they are currently exempt.

GSHA supports continued exemption based on the QF remaining independent of "traditional utilities, transmission providers and other power producers" subject to clarification. GSHA does not understand what is meant by "other power producers" in the clause. Some GSHA members have ownership interests in more than one QF, none of which are owned by utilities. GSHA would not support this exemption proposal to the extent that ownership of more

than one QF would exclude such entity from availing itself of the exemption. If the exemption is available to one QF meeting the criteria, it should be available to all.

To the extent the Commission determines that exemption is available to QFs based on size, the Commission should find that "smaller" projects are those 20 MW or less. This is the same cut off used by the Commission to determine applicability of small generator interconnection procedures. At a minimum, however, if the Commission selects 5 MW as the cut off, it should establish as "smaller" projects with capacities of 5 MW or less, which is consistent with the Commission's determinations for minor versus major licenses.

In addition, there are a number of projects larger than 5MW, such as a 10 MW project owned by one of the GSHA members, that should be considered "smaller" for purposes of exemption. Because this may be the case for other projects, if the Commission establishes as a demarcation for qualification projects 5 MW or less, the Commission should make available a process whereby a small QF larger than 5 MW may apply to the Commission for exemption upon a showing that exemption is warranted under the circumstances. Flexibility will be critical to ensuring that QFs and renewable resources remain a part of the energy infrastructure now and in the future.

IV.

CONCLUSION

GSHA appreciates the opportunity to submit comments to the NOPR. GSHA believes that in order to have a robust and diverse market, renewable resources such as hydroelectric power must be a part of the mix. Small hydro developers rely on the current exemptions in their business dealings and struggle today to compete in the markets. For many, the loss of exemption and the additional regulatory burdens that are imposed by virtue of such loss without any

regulatory benefit, would cause substantial and significant financial burdens on them. Therefore, GSHA supports retaining the exemption from the FPA for all small power production facilities.

WHEREFORE, Granite State Hydropower Association, Inc. respectfully requests that the Commission consider its comments in this proceeding and retain the exemptions afforded by the Commission from regulation under certain provisions of the Federal Power Act.

Respectfully submitted,

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