

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE FEDERAL ENERGY REGULATORY COMMISSION  
AND  
THE STATE OF COLORADO  
THROUGH THE GOVERNOR'S ENERGY OFFICE  
TO STREAMLINE AND SIMPLIFY THE AUTHORIZATION OF  
SMALL SCALE HYDROPOWER PROJECTS

The Federal Energy Regulatory Commission (Commission) and the State of Colorado (Colorado) enter into this memorandum of understanding (MOU) for the purpose of encouraging the development of small scale hydropower as a source of clean, renewable, and local energy while safeguarding environmental and other non-developmental resources.

**Introduction**

The Commission has the authority to issue licenses and exemptions under Part I of the Federal Power Act (FPA), 16 U.S.C. §§ 791a *et seq.*, for non-federal hydropower projects. Pursuant to the FPA and other applicable legislation, Colorado plays an important role in the licensing and exemption process.

Hydropower is the largest source of renewable energy in the country; although development of this resource has not increased significantly in decades. However, in recent years, the Commission has experienced increased interest from entities seeking to develop small, low-impact hydropower projects. Also, the Department of Energy, Department of the Interior, and Department of the Army, in a March 24, 2010 memorandum of understanding, announced their intention to work more closely together and align their priorities to support the development of environmentally sustainable hydropower. Correspondingly, Colorado has increased its Renewable Energy Standard to require investor-owned utilities to obtain 30 percent of their power from renewable sources by 2020. Colorado Governor Bill Ritter Jr. signed this legislation on March 22, 2010 and noted that the new standard is one of the highest standards in the nation and establishes Colorado as "the best in the Rocky Mountain West."

Federal surveys have identified several hundred potential small hydropower projects under 5 megawatts (MW) in Colorado with a combined capacity of more than 1,400 MW. These projects have the potential to make a significant contribution to Colorado's renewable energy mix, to help meet Colorado's new Renewable Energy Standard, and to

create related business opportunities while reducing greenhouse gas emissions that contribute to climate change.

The purpose of this MOU is to develop procedures to simplify the regulatory review of small hydropower projects. Colorado proposes to implement a pilot program to identify and test opportunities to simplify and streamline procedures and regulations for authorizing small scale hydropower projects in an environmentally responsible manner. In doing so, Colorado would become a proving ground for the timely, economical, and responsible development of small hydropower projects. The Commission will work with Colorado to develop the pilot program and to review, as expeditiously as possible, proposed projects arising from the program.

### **Recitals**

The Commission and Colorado have a mutual interest in streamlining and simplifying regulations for authorizing small hydropower projects.

Therefore, Colorado and the Commission, as parties to this MOU, acknowledge that:

- A. The Commission has responsibility for issuing licenses under Part I of the FPA, 16 U.S.C. §§ 791a *et seq.*, for non-federal hydropower projects. This licensing authority includes two exemptions from the licensing provisions of Part I of the FPA – one for small conduit hydroelectric facilities (conduit exemption) and one for small hydroelectric projects (5 MW exemption). In issuing licenses and exemptions, the Commission has responsibilities under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*, and other relevant environmental protection statutes.
- B. The Commission has regulatory authority over dam safety under the FPA, as amended, 16 U.S.C. §§ 792-828c (1982).
- C. Colorado has regulatory authority and responsibilities relating to use of its waters including: regulatory authority over water quality under Colorado Revised Statutes (CRS) §§ 25-8-101 to 703 CRS; and environmental regulatory responsibilities under CRS Title 33 – Wildlife and Parks and Outdoor Recreation; Title 35 – Agriculture; Title 36 – Natural Resources – General; and Title 37 – Water and Irrigation.
- D. Through its pilot program, Colorado will prescreen projects to ensure that they qualify for either conduit or 5 MW exemptions.

Colorado will prescreen a potential conduit exemption to ensure that:

- The project uses the hydroelectric potential of a conduit constructed primarily for non-hydropower purposes;
- The potential exemptee owns the lands upon which the powerhouse and all related hydroelectric project facilities will be located; and
- The project is not located on federal lands.

Colorado will prescreen a potential 5 MW exemption to ensure that:

- The project is located at the site of an existing dam or uses a natural water feature;
- The project proposes new installed capacity or increased capacity; and
- The exemptee owns all lands and facilities, including the dam and reservoir, other than federal lands.

E. Colorado's primary criterion for its pilot program will be that a small hydropower facility is being added to existing infrastructure. To meet this criterion, proposed projects must satisfy the following, as appropriate:

- The project will be located within an existing water delivery system;
- The project will use existing infrastructure, including points of diversion and discharge;
- There will be no increased stream diversions;
- The project will be entirely contained by existing waterway structures;
- The primary purpose of the infrastructure will remain, e.g., most commonly municipal water supply and irrigation;
- There will be no significant change in operation of the infrastructure;
- The water delivery system has all necessary water rights, permits, licenses or other approvals required by any local, state, or federal authority;
- The project will not adversely affect water quality;
- The project will not adversely affect fish passage;
- The project will not adversely affect a threatened or endangered species;
- The project will not adversely affect a cultural resource;
- The project will not adversely affect a recreational resource; and
- The project will meet all of the other requirements for either a conduit or a 5 MW exemption.

- F. Colorado will consult with the relevant federal and state agencies, tribes, and interested public with respect to each project as part of its pilot program in order to ensure an efficient process.
- G. To ensure efficient processing of hydropower applications, the Commission maintains electronic information systems to notify stakeholder groups and the Commission accepts electronic submittal of hydropower applications.

### **Agreement**

Now, therefore, the Commission and Colorado agree that:

1. Colorado will develop a pilot program to test options for simplifying and streamlining procedures for authorizing conduit exemptions and small 5 MW exemption projects while ensuring environmental safeguards.
2. The Colorado pilot program will streamline the pre-filing consultation process by prescreening potential small hydropower applicants in Colorado. This streamlined process should ensure more complete hydropower applications that should facilitate expedited Commission processing.
3. To ensure timely coordination of program activities, Colorado and the Commission will each identify a single point of contact for the implementation of the pilot program.
4. The Commission and Colorado agree to hold quarterly teleconferences between the established points of contact while developing and implementing the pilot program.
5. Colorado will develop the selection process for projects to be included in its pilot program.
6. Colorado will develop the processes and the procedures for implementing the pilot program by the end of August 2010, which shall include a process for prescreening applications for compliance with the Commission's regulations for exemptions, after consultation with the Commission. However, nothing in this MOU precludes any entity from filing an application with the Commission outside the Colorado pilot program process.
7. Colorado and the Commission agree to evaluate the effectiveness of the pilot program. Colorado's pilot program will continue until 20 projects have gone through the program. Should the procedures or some aspects thereof prove successful, the parties to this MOU intend that these approaches be continued to

facilitate an expedited exemption process for small hydropower projects in Colorado.

8. Colorado agrees to prescreen all the projects selected for the pilot program before an applicant submits its exemption application. As part of the prescreening process, Colorado will:
  - Have its consultant guide and educate potential project applicants;
  - Have its consultant review the applications for completeness and compliance with the Commission's exemption requirements; and
  - Submit the project application to the relevant resource agencies for review and comments as required by 18 C.F.R. § 4.38(c)(5).
9. Colorado agrees to file any terms and conditions prescribed by the state fish and wildlife agency and encourage the U.S. Fish and Wildlife Service to file terms and conditions pursuant to section 30(c) of the FPA, 16 U.S.C. § 823a(c), within ten days of any application filed with the Commission that has been prescreened as a part of its pilot program.
10. The Commission agrees to waive the 1st and 2nd stages of consultation [18 C.F.R. §§ 4.38(b) and (c)] if Colorado state and federal resource agencies and any affected Indian tribe waive, in writing, compliance with the consultation requirements of section 4.38 for projects prescreened by Colorado in accordance with section 4.38(e), 18 C.F.R. § 4.38(e). If the Commission is able to issue such a waiver then it agrees to:
  - Within 30 days of receipt, either issue a deficiency letter; an additional information request; or a notice accepting the application, declaring the project ready for environmental analysis, and soliciting motions to intervene, comments, recommendations, and terms and conditions;
  - If a notice is issued, establish a deadline of 30 days from the notice for filing responses;
  - If a deficiency letter or an additional information request is issued, after the needed information is received, issue a notice and establish a deadline of 30 days from the notice for filing responses; and
  - Issue simultaneously a single EA and order acting on the exemption application.
11. The Commission will accept project drawings developed using off-the-shelf software or freeware provided the drawings comply with section 4.39 of Commission regulations, 18 C.F.R. § 4.39.

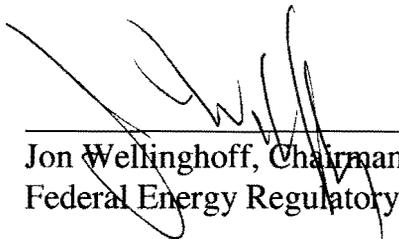
12. Colorado and the Commission will share and make publicly available all economic, environmental, and technical data gathered on these projects to the extent consistent with applicable law and regulations.

Nothing in this MOU requires any party to take any action that is contrary to applicable federal or state law or regulation.

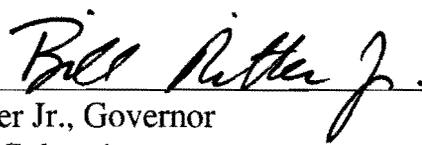
This MOU is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing.

This MOU is not intended to be a binding contract enforceable in a court of law or in an administrative forum. It is intended only to establish a process for further cooperation between the governmental entities signing this document.

This MOU will take effect when signed by all the parties hereto. This MOU may be modified at any time by the mutual written agreement of the parties. The Commission or Colorado may terminate the MOU upon thirty (30) days written notice to the other. During this period, the parties shall make good-faith efforts to resolve any disagreement.

  
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Jon Wellinghoff, Chairman  
Federal Energy Regulatory Commission

Date: August 24, 2010

  
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Bill Ritter Jr., Governor  
State of Colorado

Date: August 19, 2010