

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 3, 2005

In Reply Refer To:
Great Lakes Hydro America, LLC
Docket No. ER02-2397-002

Patton Boggs LLP
Attn: Jennifer L. Schwitzer, Esq.
Counsel for Great Lakes Hydro America, LLC
2550 M Street, NW
Washington, DC 20037

Dear Ms. Schwitzer:

1. On December 16, 2004, Great Lakes Hydro America, LLC (GLHA) filed an updated market power analysis pursuant to the requirements of the Commission's order granting GLHA authority to sell capacity and energy at market-based rates.¹ GLHA has previously submitted a revised schedule incorporating the Commission's market behavior rules.² GLHA's submittal is accepted for filing. As discussed below the Commission concludes that GLHA satisfies the Commission's standards for market-based rate authority.
2. GLHA, formerly known as GNE, LLC, is a wholly-owned subsidiary of GNE GP Inc., an Ontario corporation that is wholly owned by GNE Trust (a Quebec trust), which is, in turn, wholly owned by Great Lakes Power Trust (GLPT), which is, in turn, wholly owned by Great Lakes Hydro Income Fund (GLHIF).

¹ *GNE, LLC*, 97 FERC ¶ 61, 286 (2001); GNE, LLC, unpublished letter order Docket No. ER02-159-001 (January 30, 2002) (accepting compliance filing).

² *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004). See *Acadia Power Partners, LLC*, Docket No. ER03-1372-001, *et al.* (March 29, 2004) (unpublished letter order).

3. GLHA states that it owns and operates seven hydroelectric plants located on the Penobscot and Moose Rivers in Northern Maine, with a combined installed capacity of approximately 129 MW. GLHA also owns and operates eight hydroelectric plants located on the Androscoggin River in Coos County, New Hampshire, with a combined capacity of approximately 44 MW. GLHA states that an affiliate has announced its intention to acquire a 50 percent interest in the 49 MW, Bellows Falls Hydroelectric Project in Vermont. In New England, GLHA and its subsidiaries control 974 MW of uncommitted supply, which includes Bellows Falls and capacity in first-tier markets that could reach the ISO New England, Inc. (ISO-NE) market. In addition GLHA states that it currently has affiliates that own 776 MW of generating capacity in the market administered by the New York Independent System Operator (NYISO) and that, in the NYISO, its affiliates control 1,794 MW of uncommitted supply, which includes capacity from first-tier markets that could reach the New York power market.³

4. Notice of GLHA's December 16, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 78,406 (2004), with motions to intervene and protests to be filed by January 6, 2005. None was filed.

5. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁴ As discussed below, the Commission concludes that GLHA satisfies the Commission's standards for market-based rate authority.

6. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. GLHA has prepared both the pivotal supplier and the wholesale market share screen analyses for the ISO-NE and NYISO markets. The Commission has reviewed GLHA's generation market power screen analyses for the ISO-NE and NYISO markets, which indicate that GLHA passes the screens in those markets. Accordingly, the Commission finds that GLHA satisfies the Commission's generation market power standard for the grant of market-based rate authority.

³ GLHA states that affiliates also own a partnership interest in a 192 MW hydroelectric plant in Louisiana in the Southwest Power Pool region (SPP). GLHA states that its affiliates have only a non-voting interest in the facility and thus do not control its operations and the plant is fully committed under a 40-year power purchase agreement with Entergy-Louisiana.

⁴ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,991 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

7. GLHA states that other than limited “inside-the-fence” electricity delivery “interconnection facilities,” neither GLHA nor any of its affiliates owns, controls or operates any facilities for the transmission of electricity in interstate commerce within or directly interconnected with transmission facilities in the United States. GLHA states that the transmission facilities owned by its affiliates, GLPT and GLPL, serve exclusively intra-Canadian customers and are not directly interconnected with the United States. GLHA states that without interconnections in the United States, neither GLPL, GLPT, nor any generator or load-serving entity connected to the transmission facilities of either, can directly transmit power to, or directly receive power from, any U.S. power buyer or seller.⁵

8. The Commission has clarified that its concerns are more limited for foreign transmission-owning entities than for transmission-owning entities in the United States. The Commission has further stated that its concern is not transmission service to serve Canadian loads—it is transmission to serve United States load.⁶ The Commission expanded its concern to include access for United States competitors into Canadian markets on a reciprocal basis.⁷ Thus, the Commission seeks to assure reciprocal service into and out of Canada when Canadian entities seek access to United States markets, but the Commission is not seeking to open intra-Canada electric markets through the imposition of open access tariffs for transactions wholly within Canada.⁸

9. Therefore, the Commission requires a Canadian entity seeking market-based rate authority to demonstrate that its transmission-owning utility affiliate offers non-discriminatory access to its transmission system that can be used by competitors of the

⁵ GLHA states that GLPT has an open access transmission tariff (OATT which was filed as part of Brascan Energy Marketing Inc. (BEMI)’s 2001 market-based rate application. *See Maclaren Energy, Inc.*, Docket Nos. ER01-2104-000 and ER01-2104-001 (Aug. 27, 2001) (unpublished letter order) (*Maclaren*). GLPL’s interconnection facilities are operated by the Independent Electricity Market Operator of Ontario (IMO). *See Ontario Energy Trading International Corp.*, 103 FERC ¶ 61,044 (April 11, 2003); *reh’g* of 100 FERC ¶ 61,345 (2002). The Commission held that IMO’s market rules provide open access transmission on a comparable, non-discriminatory basis for wheeling through and out of the Province of Ontario.

⁶ *Energy Alliance Partnership*, 73 FERC ¶ 61,019 at 61,030 (1995) (*Energy Alliance*).

⁷ *TransAlta Enterprises Corp.*, 75 FERC ¶ 61,268 at 61,875 (1996) (*TransAlta*).

⁸ *See British Columbia Power Exchange Corporation*, 78 FERC ¶ 61,024 at 61,100 (1997).

Canadian seller to reach United States markets.⁹ However, if Canadian transmission facilities meet the criteria for waiver of Order No. 888, such a demonstration would not be required.¹⁰ The Commission set forth criteria for waiver of Order No. 888 in *Black Creek Hydro, Inc.*¹¹ The Commission clarified that it will grant requests for waiver of Order No. 888 by public utilities that can show that they own, operate or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. The Commission noted, however, that all requests for waiver of Order No. 888 that it grants are subject to the condition that the public utility receiving such waiver, should it receive a request for transmission service, must file with the Commission a *pro forma* tariff within 60 days of the date of such request and must comply with any additional requirements that are effective on the date of the request.

10. In this case, we find that the transmission tariff under which GLHA's affiliate, GLPT, will provide transmission service that is consistent with or superior to the *pro forma* tariff, and thus satisfies the Commission's transmission market power standard for the grant of market-based rate authority. We find that the GLPT OATT provides for service that is consistent with that provided under the *pro forma* tariff. In fact, we find that the transmission tariff under which GLPT will provide transmission service is almost identical to the Commission's *pro forma* OATT. The main difference is that because GLPT is located in Canada the tariff refers to Canadian law rather than to U.S. regulatory authority. In particular, it provides for both point-to-point and network transmission service to be available on a non-discriminatory and comparable basis, transmission request processes (including OASIS requirements consistent with the *pro forma* OATT), and transmission curtailments consistent with the *pro forma* OATT.¹²

11. With regard to GLPL, in *Maclaren*, the applicant represented that GLPL only owns or controls limited and discrete transmission facilities.¹³ In particular, the applicant represented that GLPL's facilities are located in a sparsely populated part of northwestern Ontario, Canada. The applicant claimed that there is no interest in obtaining service from GLPL. The applicant also provided maps of GLPL's transmission facilities, which

⁹ See, e.g., *TransAlta*, 75 FERC ¶ 61,268, and *Energy Alliance*, 73 FERC ¶ 61,019.

¹⁰ *Canadian Niagara Power Company*, 87 FERC ¶ 61,070 (1999) (*Canadian Niagara*).

¹¹ *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996) (*Black Creek*).

¹² *NorthPoint Energy Solutions, Inc.*, 109 FERC ¶ 61,178 at P 7 (2004).

¹³ In *Maclaren*, the applicant stated that both GLPL and GLPT meet the criterion for owning "limited and discrete" facilities under *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996) (*Black Creek*). See *Maclaren Energy, Inc.*, Docket Nos. ER01-2104-000 and ER01-2104-001 (May 24, 2001 as amended on July 5, 2001 submittal).

support the applicant's claim that GLPL's transmission facilities are "limited and discrete facilities that do not form an integrated transmission grid" under the standard set forth in *Canadian Niagara* and *Black Creek*. Based on these representations the Commission finds that GLHA's affiliate, GLPL meets the criteria set forth in *Black Creek*, and accordingly GLPL's transmission facilities would meet the criteria for waiver of Order No. 888.

12. However, the Commission notes that, in the future, wholesale power sellers (which could be potential competitors of GLPL) could locate in the service area of GLPL or its Canadian affiliates, and such competitors would need transmission service to wholesale power customers (who themselves could be either potential competitors or potential customers of GLPL) located elsewhere; these wholesale power sellers would need to use these facilities to transmit power to their wholesale customers. Accordingly, consistent with previous Commission orders, the Commission cautions GLPL that in the event that it or a Canadian affiliate denies, delays or requires unreasonable terms, conditions or rates for service over its facilities to a potential competitor, the competitor may file a complaint with this Commission that could result in the revocation of its affiliate's authority to sell power at market-based rates.¹⁴ Accordingly, the Commission finds that GLHA has satisfied the Commission's transmission market power standard for the grant of market-based rate authority.

13. GLHA states that neither it nor any of its affiliates owns or controls any resources that could be used to restrict the market entry of competing suppliers. GLHA states that construction of a generating station expected to be operational in the summer of 2005 in Québec that will add 9 MW of installed capacity and 62 GWh of energy annually, on average, does not constitute a barrier to entry because other market participants have opportunities for siting in the area. GLHA also states that an affiliate owns Highvale Power, a coal supplier in western Canada. Based on this representation, the Commission is satisfied that neither GLHA nor any of its affiliates can erect barriers to entry.

14. GLHA states that neither it nor any of its affiliates has a franchised service area for the sale of electricity within the United States. GLHA states that, while it is affiliated with GLPT and GLPL, affiliate abuse and reciprocal dealing are not of concern for the Commission because power sales, and sales of non-power goods and services, from or to GLHA's Canadian affiliates take place solely within Canada. Based on this representation, the Commission finds that GLHA satisfies the Commission's concerns with regard to affiliate abuse.

15. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission Electric Quarterly Reports containing: (1) a summary of the contractual terms and conditions in

¹⁴ *Canadian Niagara Power Company*, 87 FERC ¶ 61,070 (1999).

every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.¹⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁶

16. GLHA must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹⁷ A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

17. Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, GLHA is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement adopted in Order No. 652.

¹⁵ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹⁶ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b) (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹⁷ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Order No. 652).

18. GLHA is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.