

OCEAN RENEWABLE ENERGY COALITION
P.O. Box 61584
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December 3, 2005

Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington D.C. 20426

Re: Docket No. DI05-3-000
Green Wave Tidal Energy project
Energetech America LLC

To the Secretary,

The Ocean Renewable Energy Coalition is a trade association dedicated to promoting and advancing the commercialization of all offshore renewable energy projects. To this end, we seek to file comments in the above captioned proceeding in general support of the Commission's policy allowing for temporary waivers from licensing for project that utilize experimental technologies.

As discussed in this letter, OREC applauds the Commission's efforts to grant temporary waivers from licensing for experimental projects. At the same time we remain concerned that the Commission's test for waiver is too stringent and developers to pass through too many hoops in order to qualify for a short waiver. We believe that the Commission can carry out its regulatory obligations with a more streamlined approach to license waivers.

I. Background on the Commission's Waiver Program

As you are aware, the Commission first asserted jurisdiction over offshore wave and tidal projects in *Aqua Energy Group*, 102 FERC para. 61,242 (2003). The Commission's decision was based on the theory that a small power producing buoy constitutes a "power house" within the meaning of the Federal Power Act, thus bringing offshore wave and tidal projects within the Commission's jurisdiction.

Since the *Aqua Energy* order, the Commission established a policy by which it would temporarily waive its licensing requirements for hydrokinetic, wave or other small,

experimental technologies that meet three criteria. *See Verdant Power*, 112 FERC para. 61,143 (2005). Specifically, the proposed project must (1) utilize experimental technology, (2) operate for only a short period of time for the purpose of conducting studies necessary to preparation of the license application and (3) effectively have no net impact on the grid or interstate commerce. As a practical matter, FERC's test bars a developer from selling power during the test period because revenue generating sales might suggest that the project is no longer experimental and in addition, would impact interstate commerce.

II. The Energetech Decision

On July 11, 2005, Energetech filed a Declaration of Intent, asking the Commission to declare that it did not have jurisdiction over Energetech's proposed Port Judith Project. On October 11, 2005, the Commission issued an order asserting jurisdiction over Energetech's Port Judith Project and directing Energetech to obtain a license for the project. *Energetech America LLC*, 113 FERC para. 62,027 (2005).

On November 4, 2005, Ann Miles, Director of the Division of Hydropower Licensing wrote to Energetech to request additional information to determine whether the project would meet the *Verdant* criteria for a temporary waiver. The letter asks Energetech to explain (1) if it will provide power to an off grid user and how, (2) if it will provide power to the local utility and if so, how it will minimize impact on interstate commerce and (3) the long term plan for the project when the test period ends. Energetech has 30 days to respond.

III. OREC's Position

OREC supports any effort by the Commission to reduce the barriers to siting wave, tidal or hydrokinetic projects in rivers or oceans that utilize experimental technologies. At the same time, the Commission's test for a waiver is overly narrow and requires developers to either locate an off-grid user for power (which may not be possible). Alternatively, demonstrating a lack of impact on the interstate grid is even more onerous: will a developer have to retain an electrical engineer to study the flow of electrons to and from the interconnected delivery point to ascertain whether the project impacts interstate commerce or not? This would require a developer to spend even more resources to get a short term waiver.

Instead, OREC endorses a more common sense approach to a license waiver, perhaps just a certification from a developer that a project will be used as a prototype or demonstration project. By definition, prototypes or demo projects do not impact interstate commerce because their primary purpose is experimental or scientific in nature, not commercial. A simple certification offers the best, least cumbersome approach to obtaining a short term waiver.

OREC applauds the Commission's efforts to streamline licensing for smaller wave and tidal applications proposed for oceans and rivers. But we also ask the

Commission to consider additional methods, such as the one we have proposed, to simplify the waiver process even further, both in this docket and for all wave and tidal proposals.

Sincerely,

/s/ Carolyn Elefant

Carolyn Elefant
Sean O'Neill
Ocean Renewable Energy Coalition