

UNITED STATES OF AMERICA 113 FERC ¶62,027
FEDERAL ENERGY REGULATORY COMMISSION

Energetech America L.L.C.

Docket No. DI05-3-000

ORDER RULING ON DECLARATION OF INTENTION
AND FINDING LICENSING REQUIRED

(Issued October 11, 2005)

1. On July 11, 2005, Energetech America, L.L.C. (Energetech) filed a Declaration of Intention (DI) concerning its proposal to develop the Green Wave Rhode Island Ocean Wave Energy Project (project), to be located in the tidal waters near the Point Judith Harbor of Refuge in the Town of Narragansett, Washington County, Rhode Island.

PROJECT DESCRIPTION

2. The proposed project would consist of (1) an off-shore floating steel frame structure comprising a parabolic shaped steel wall, an oscillating water column/wave chamber, and a 500-kW wave-induced air turbine-generator, moored to an array of twelve piles embedded into the seafloor; (2) an approximately 1.2-mile-long transmission cable to transmit electricity to the on-shore transformer; and (6) appurtenant facilities. The power would be connected to an interstate grid. It will not occupy any tribal lands.

PUBLIC NOTICE

3. Notice of the DI was published August 18, 2005.¹ Protests, comments, and petitions to intervene were to be filed by September 12, 2005. On September 12, 2005, the Fish and Wildlife Service, U.S. Department of the Interior (Interior), filed a Notice of Intervention and Comments. The filing stated that the Commission did have licensing jurisdiction over the proposed project because it

¹ Notice was also given of Energetech's related request for a license exemption or waiver of licensing requirements, should the proposed project be found jurisdictional. Whether the project qualifies for an exemption will be addressed at a later date.

was to be located on a navigable waterway, and it would be connected to an interstate grid, thus affecting interstate commerce.²

JURISDICTION

4. Pursuant to Section 23(b)(1) of the Federal Power Act (FPA)§817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it:

- is located on a navigable water of the United States;
- occupies lands of the United States;
- utilizes surplus water or waterpower from a government dam; or
- is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction has occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.

DISCUSSION

5. The proposed project will not occupy any public lands or reservations of the United States and will not use surplus water or water power from a Federal government dam. The project will be located on a navigable waterway at the site or in the vicinity of the proposed project. The proposed project will be constructed after August 26, 1935, it would be connected to an interstate transmission grid, and the power generated would affect the interests of interstate or foreign commerce because the power generated would be transported into the interstate grid.

CONCLUSION

6. The proposed project will be located on a navigable waterway, will have post-1935 construction, is located on a commerce clause waterway, and will affect the interests of interstate commerce through its selling of power through an interstate grid. In accordance with Section 23(b)(1) of the FPA, Energetech America, L.L.C. must obtain a license for the operation of the Green Wave Rhode Island Ocean Wave Energy Project.

² Interior also requested that the Commission deny the part of Entergetech's request dealing with the filing as an application for a license exemption or waiver of licensing requirements.

The Director orders:

(A) Pursuant to Section 23(b)(1) of the Federal Power Act, the Green Wave Rhode Island Ocean Wave Energy Project is required to be licensed. No construction of the project may commence until a license has been obtained.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Joseph D. Morgan
Director
Division of Hydropower Administration
and Compliance