



**HYDROPOWER
REFORM
COALITION**
*Putting water, wildlife,
and people back in rivers.*

Filed Electronically

November 2, 2007

Nathanial J. Davis, Sr.
Acting Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Comments on the Commission's proposed Hydrokinetic Pilot Project Licensing Process (AD07-14-000)

Dear Mr. Davis,

The Hydropower Reform Coalition (Coalition), a national coalition of more than 140 organizations representing more than one million people, appreciates the Commission's willingness to search for innovative solutions to the problems inherent in regulating new and still relatively untested renewable energy technologies. We support the Commission in its goal of encouraging the development of these technologies, and look forward to working with the Commission and the diverse group of stakeholders with an interest in these new technologies.

The Coalition acknowledges hydrokinetic technology's potential as one form of renewable power. We cautiously support a pilot licensing process that will enable the short-term testing of these new technologies while minimizing the risk of adverse environmental impacts. While we appreciate the Commission's desire and willingness to act quickly, we would also advise the Commission to proceed with caution, particularly in regards to the siting of new energy development in aquatic ecosystems that are already highly stressed by existing hydropower development. As all stakeholders in this new process have agreed, there are many unknowns regarding the potential environmental effects of implementing new

Steering Committee:

Alabama Rivers Alliance • American Rivers • American Whitewater • Appalachian Mountain Club
California Hydropower Reform Coalition • Friends of the River • Idaho Rivers United
Michigan Hydro Relicensing Coalition • Natural Heritage Institute • New England FLOW • New York Rivers United
River Alliance of Wisconsin • South Carolina Coastal Conservation League • Trout Unlimited

technologies in a new operating environment. Given that the commission is proposing a process in which license applications would be reviewed, coordinated, and completed in the space of six months, there is a great risk of rushing into decisions that could result in significant unintended environmental impacts. Any pilot licensing process must provide safeguards to ensure that aquatic ecosystems will not fall victim to the unintended consequences of any expedited permitting of new energy development. We offer these comments and recommendations in hopes that they may help the Commission to avoid some of these unintended consequences.

In general, we believe that any Hydrokinetic Pilot Project Licensing Process must:

- Be limited to small-scale projects that are operated primarily for testing and demonstration purposes.
- Feature limited license terms (such as the five-year limit proposed in the Commission's white paper).
- Not allow for the siting of projects in environmentally sensitive areas.
- Require applicants to provide adequate information related to the affected environment and project impacts.
- Require that projects be modified physically or operationally - or, if necessary, removed outright - during the license term in order to avoid significant adverse impacts.
- Include license terms and conditions that require and provide necessary funding for project decommissioning and full site restoration in the event that a license expires without proceeding into a full licensing or is surrendered or revoked.

1. Need for Formal Rulemaking

The Coalition strongly disagrees with the Commission's proposed plan to implement this new licensing process without a formal rulemaking. While a formal rulemaking procedure might require more effort up front, it is critical that the Commission get the design of any new licensing process right. The extra time and opportunity for public input will certainly result in a final product that better meets the needs of license applicants, Commission and agency staff, and all other stakeholders.

The Coalition submitted comments last month on a Notice of Public Rulemaking regarding the Commission's eFiling system (RM07-16-000). We find it frankly incredible that the Commission would require a formal rulemaking to answer the relatively straightforward question of whether electronic documents filed with the Commission should be submitted in Microsoft Word or PDF format while at the same time choosing to not hold something as critical as the design of an entirely new licensing process up to the same level of public scrutiny.

The proposed pilot process constitutes a significant departure from all three of the Commission's existing hydropower licensing processes. While it purports to be based on the Integrated Licensing Process (ILP), we note that it waives many of the ILP's core requirements, including pre-application studies. This is clearly a new - and very different - licensing process. Its design should not be undertaken lightly, and should not be undertaken at all without the public transparency and accountability that accompanies the formal rulemaking process. The Commission should instead proceed with a rulemaking that will define the scale and scope of its proposed new program and will allow for full public input into the development of this process.

2. Developing the Record of Decision (Baseline Information)

The Commission and other agencies with jurisdiction over hydrokinetic projects should compile existing scientific and other documents into a baseline library that describes the:

- Biological and physical resources of the several ecosystem types (ocean, near-shore tidal, estuarine, in-channel) where development may occur;
- Potential environmental impacts of such development; and
- Methods and technologies available to monitor such impacts.

Compiling this baseline information is necessary to the Commission's assessment and review of individual pilot-projects. The development of this information is also in the public

interest. We recommend that the Commission work with other State and Federal agencies to establish this baseline library by June 2008.

As suggested during the Portland technical conference, The Commission can accomplish this programmatic data collection and review concurrently with process implementation, ensuring that baseline information is available while the pilot process moves forward. Several panelists in Portland also recommended that the Commission adopt a state, regional, or coast-wide framework for planning, which should include measures to limit the number of applications by state or region and provide assurances that the states have a say in designating sensitive sites. We support this broad-view planning and recommend that the Commission, through its Department of Technology, complete these state or regional plans and undertake a comprehensive and nationwide siting analysis that would avoid harm to all coastal and marine resources, would have minimal environmental impact, and would save much time for all participants.

The Coalition offers the following recommendations with respect to the schedule proposed in the Commission's white paper.

Timing Criteria

- Site-specific studies must be completed before the notice of intent is filed. Given the highly abbreviated timeframe of the proposed pilot licensing process, there is insufficient time to complete studies between the date that the notice of intent is issued and the date when the license application is filed.
- Proposed performance standards, monitoring, environmental mitigation, and other compliance plans, which the Commission will review and use to make decisions, must be filed along with the pre-application document so that stakeholders will have an opportunity for review and comment. The FERC white paper suggests that these plans would be filed after the license is instituted.
- The Commission should enter into a Memorandum of Understanding (MOU) or other arrangement with each of the agencies that have conditioning authorities for hydrokinetic projects. These agencies would include federal agencies and agencies in all states where hydrokinetic development is likely to occur. This MOU would include:
 - A commitment to coordinate procedures in order to reach final agency decisions by a specified deadline, and.

- Specific procedures to prepare a single environmental document as the basis for those decisions.

3. Public Involvement

At FERC's October conference in Portland, OR, FERC staff indicated that "FERC needs a process with public involvement from day one [...] and that provides for the resolution of conflicts." While we strongly agree with this assertion, we note that the Commission's proposed pilot licensing process fails to provide any formal process for public participation or schedule for public meetings. Consequently, a project developer's obligation and responsibility to communicate with the public is either absent or not clearly described. The Commission has long made it clear that it expects license applicants to "cast a wide net for interested parties and relevant information."¹ The same standard should apply to the pilot licensing process. Stakeholders - regardless of whether they are dealing with a traditional hydropower project or a hydrokinetic project that uses new technology - often have little or no familiarity with FERC and the licensing process. The Commission should ensure adequate public information and opportunities for participation by:

- Providing early public notice of a draft application that includes:
 - Information about the site, sensitive species that may be present, and other baseline environmental information.
 - Performance standards for environmental protection
 - Requirements for monitoring and adaptive management, and
 - The basis for such standards and requirements
 - Specific triggers for operational changes and project removal and decommissioning.
- Developing specific requirements for applicants about whom to contact, for what purpose, and when.
- Requiring (since State, federal, and local permits are often required before a developer can move forward with a pilot project) that the underlying data, analysis, and correspondence related to those permits be included as part of the Commission's public record for each pilot licensing process.

¹ <http://www.ferc.gov/industries/hydropower/gen-info/licensing/ilp/eff-eva/ideas.pdf>

- Publishing the baseline library on the Commission’s web page, and extend existing information and communications technologies (including FERC’s eSubscription, eFiling, and eLibrary) to pilot-projects to provide procedural information as well as baseline and impact assessment distribution.
- Providing all parties with a comprehensive list of relevant stakeholder contacts, including those compiled by fish, wildlife, water, and coastal agencies; the fishing industry; coastal communities; federal regional fishery management councils; non-governmental agencies and organizations.
- Creating a Hydrokinetic Liaison that can accommodate agency requests for designated teams.

4. Decommissioning

The Coalition strongly supports the Commission’s proposed concept of requiring project decommissioning and removal in cases where the operation or installation of pilot projects results in significant adverse impacts to public aquatic resources. This requirement, however, begs several important questions:

- What constitutes a “significant” impact?
- What criteria will be used to make this determination?
- How will FERC monitor and assess the impacts from project operations?

To address these questions, we recommend that the Commission:

- Establish a decommissioning protocol that includes specific criteria for defining “significant impacts” that will require decommissioning or removal if changes in project design or operation are not effective. These protocols should be developed with involvement and input from agency, tribal, NGO, and other stakeholder groups.
- Require that applicants post bonds to cover the full costs of decommissioning or removal.
- Develop a mechanism assuring that stakeholders will remain fully informed and involved as the licensees for projects which do not have significant adverse impacts move towards a full license application.

5. Assurance that Pilot-Project Licensing Changes are Restricted to New Projects and New Technologies in New Environments

A participant at the Portland conference asked if “the proposed tidal project licensing system would apply as the actual licensing system for the many thousands of small (potential) in-stream hydrokinetic projects.” Commission staff answered that “traditional licensing [...] already regulates the small projects, and I don’t think that would change.”

We support this interpretation: traditional hydropower technologies are sufficiently mature so as not to require instream pilot projects. The Commission's existing licensing processes already work well for traditional hydropower technologies, which do not need testing pilot phases. The pilot licensing process should under no circumstances apply to projects that feature dams, impoundments, or diversions of water. We ask that the Commission clarify its position on new technologies in existing licensing processes and in traditional environments, specifically any anticipated changes to the licensing process for instream projects on non-tidal rivers and streams. The Commission should clarify that this new licensing process will only be available to projects utilizing new hydrokinetic technologies.

6. Additional comments

a. The Commission should avoid hasty decisions that might fuel a hydrokinetic "gold rush"

Regardless of whether an applicant is seeking a pilot license, a traditional license, or a preliminary permit, the Commission must keep in mind that all generation - as we have learned over time with other low-emissions technologies like hydropower and wind - has environmental consequences and impacts, some of which can be quite severe. Especially in the case of new and relatively untested technologies, the risk of unintended consequences is great. Regardless of process, as the Commission analyzes these individual projects, it must also seek to avoid potentially irreversible impacts by addressing the cumulative impacts of these new technologies. Thus the criteria for determining the size of a project, be it pilot or utility scale, should consider the project's overall footprint rather than its generating capacity. The Commission's review of a project must also consider the areas being affected,

the extent of other proposed and pre-existing energy developments as well as other ongoing impacts in those areas, and the overall number of proposed generating units. For example, we note that a number of preliminary permit applications have been filed for projects in the Mississippi River. We have absolutely no scientific or historic basis to determine the impacts of even one in-channel turbine, let alone hundreds or thousands in one river system. We would therefore recommend that, while these technologies are still being tested, the Commission consider placing limits on the amount of development in a given region or watershed, and give serious consideration to limiting the number of hydrokinetic projects in a region or state.

b. Identifying key ecological sites.

Given the unknowns regarding energy development in ocean and tidal environments and the current technological limitations on environmental monitoring in these areas, the Commission must exercise caution by adopting a strict and expansive definition of “sensitive areas. Before the Commission can allow developers to put projects in the water, especially those projects not seeking a pilot process, it must have a better understanding of potential impacts and outcomes. We recommend using more than just federal and state designations, instead expanding the list to include regionally critical and sensitive areas (i.e. Puget Sound), migratory pathways, nursery, feeding and spawning areas, as well as National Marine Sanctuaries and Habitat Areas of Particular Concern. The Commission should consult State and local resource agencies in an effort to ensure critical areas are appropriately identified.

c. Focus on Listed Species

When dealing with new technologies that have uncertain environmental impacts, a simple focus on listed species is inadequate: it is not enough to simply protect existing listed species; the Commission must also ensure that its actions do not inadvertently result in

impacts that may add new species to the list. Without a more comprehensive understanding of potential impacts, indiscriminate construction of hydrokinetic projects could quickly lead to new and unanticipated listings, as well as increased litigation. An abundance of caution would benefit the environment and the industry alike: in addition to negative effects on the species themselves and their critical habitats, unintended damage to non-listed aquatic life could poison the public's opinion of this new technology, enough to delay or even eliminate the consideration of hydrokinetic technologies as a potential source of renewable energy.

d. Need for Shared Information

Besides producing renewable energy, hydrokinetic technologies highlight the integral relationship between saltwater and freshwater systems, and the studies accompanying these new projects may help further our understanding of ocean and tidal environments. As with any emerging technology, the information documenting successes and failures or providing guidance on how to identify and account for impacts to natural processes and surrounding environments is very limited. As these pilot projects move forward in different locations and different environments, it is essential that information, results and lessons learned are shared as they develop.

Proprietary information should be narrowly defined to ensure that information related to ocean mapping, monitoring of currents, and impacts to aquatic species and habitats is open and available. This open sharing of information will help to ensure that the successes and failures of these emerging technologies - particularly related to resource impacts - are widely available to help inform planning and protections in other locations.

Thank you for the opportunity to provide comments on the proposed hydrokinetic license program.

Sincerely,

John Seebach, Chair
Hydropower Reform Coalition