

**New York State Department of Environmental Conservation
Division of Environmental Permits, Region One**

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Agency Comments on Notice of Inquiry (NOI) and Interim Statement of Policy

April 30, 2007

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

**Re: Docket No. RM07-08-000
Notice of Inquiry (NOI) and Interim Statement of Policy
Permits for Wave, Current, and Instream New Technology Hydropower Projects**

Dear Secretary Salas;

The New York State Department of Environmental Conservation (Department) hereby provides comments on the above notice wherein the Federal Energy Regulatory Commission (FERC) seeks comments on how to process preliminary permit applications for wave, current, and instream hydropower projects. The Notice of Inquiry provides three alternatives for reviewing preliminary permit applications, and the Department supports FERC's decision to use the "stricter scrutiny" alternative approach until it ultimately determines how these applications will be reviewed. As indicated in the following comments, the Department recommends that the "stricter scrutiny" approach continue to be applied for all such preliminary permit applications in an effort to provide prudent stewardship of our natural resources. The following comments are provided under the headings given in the NOI for sake of clarity.

The Subject of the Notice Of Inquiry

The Department would suggest a measure of caution be applied towards a procedure to expedite the license process when the potential impacts of a new technology are not known. This is not to say that the measures listed to: (a) choose a site that minimizes environmental impact, (b) build consensus among stakeholders, and (c) provide FERC with all necessary information cannot serve to expedite the review, however, the impacts of any new technology should be fully explored irrespective of schedule.

Stricter Scrutiny Approach

Baseline studies

The Department is mindful that feasibility studies will most likely be conducted after a preliminary permit is obtained, however, this does not mean that a great deal of useful information cannot be provided in the application for preliminary permit. At a minimum, a party seeking a preliminary permit should be required to explain how it will identify a baseline of natural resources in the project area potentially impacted. In State permitting proceedings, a limited level of baseline study is typically required before one obtains any state or local approvals, and a determination of significance is made pursuant to the State Environmental Quality Review Act (SEQRA) found at 6 NYCRR Part 617. Likewise, in the FERC licensing context, it is essential that a potential applicant has a realistic and viable plan for obtaining this information. The Department strongly supports the stricter scrutiny requirements listed in the NOI that include agency consultation, development of study plans and public outreach.

Examples of the categories of the baseline data to be obtained are as follows:

- 1) Environmental sensitivity of the geographic area, including proximity to designated protected areas, sensitive spawning and nursery areas, sensitive habitats such as reefs and bars, contaminated sediments, fish and shellfish resources, submerged aquatic vegetation, fish and marine mammal migration routes, coastal barrier resources, important avian breeding areas and migration routes, and the presence of threatened and endangered species.
- 2) Competing uses such as shipping and recreational and commercial fishing,
- 3) Compatibility with existing uses and regulations in state jurisdictional waters, and
- 4) Public perception and acceptance of potential development in these areas.

The Department urges FERC to ensure that applicants make every effort to identify areas where there will be the least potential for impacts to marine resources, and to avoid conflicts with commercial and recreational activities.

Bench or Lab analysis

Given the lack of operational field data and corresponding biological studies data on most, if not all, of these emerging technologies, the Department urges FERC to evaluate a preliminary permit application requirement that would require an applicant to provide certain

minimum biological studies, or the collection of appropriate data, during any scale modeling and lab tests conducted during the development of the technology prototypes. Acquiring this data would not obviate the need for further field study and modeling, but would be very valuable in the initial assessment of the potential impacts to biological resources; especially when other specific data is not available.

The Department appreciates the opportunity to comment on the NOI and looks forward to additional discussion and dialogue with FERC on this issue. If you have any questions, please contact Kevin Kispert at (631)444-0302.

Sincerely,

/s/

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