

O.P.T.

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April 30, 2007

Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Ms. Salas:

Ocean Power Technologies, Inc. (OPT) has reviewed the Notice of Inquiry and Interim Statement of Policy for Preliminary Permits for Wave, Current, and Instream New Technology Hydropower Projects (Docket Number RM07-08-000) and has the following comments:

Comment Overview:

This new industry finds itself in a difficult situation. The balance between (a) speed to market for new technologies together with proper environmental due-diligence against (b) competitive "site-banking" is a significant issue with this Notice of Inquiry (NOI) process. The industry quickly realized the importance of filing for key sites due to the current FERC rules giving preference to the early filers. In some cases these filings included little in the way of technology or land use details. The result, some believe, is that sites are locked out from true early development. To correct this situation some have suggested that only those that are financially capable, or those with ready technology, should take precedence in the preliminary permit process. Others feel the first to file should take the site. We believe that a middle ground is appropriate. The Stricter Scrutiny approach appears to provide this middle ground.

FERC has suggested several options including:

- A. Maintain Standard Preliminary Permit Approach
- B. Stricter Scrutiny Approach

C. Decline to Issue Preliminary Permits for New Technology Projects

We believe that the Stricter Scrutiny Approach will be the best approach overall and that it strikes a balance between technology maturity, financial capability, land use, and mitigation of site banking. This is the case only if this approach keeps a “sharp eye” regarding the timeline progress and the appropriateness of the surface area that is requested in the application. One of the most important elements of this approach is that the requested land use is approximately appropriate to the project. Another important element is timeline. FERC should ensure that the site is actually being developed during the process, meaning that there is meaningful activity furthering the license application.

FERC has suggested three alternatives, discussed above, for the preliminary permit process:

Maintain Standard Preliminary Permit Approach

While we find the existing preliminary permit approach satisfactory, it does invite abuses and encourages the first to file mentality. Our experience with sites of interest has been a good one. In one case, we have been able to discuss our plans with parties that have filed before us at these sites and the overlap issue has been worked out privately. However, it is not hard to extrapolate to a point where this mutual beneficial resolution would not occur due to competition or some other reason.

We also see what appears to be site banking abuses in some filings, primarily in tidal and flow applications. These presumably are encouraged by the existing preliminary permit approach. While time will tell if these sites are actually developed, it appears that one company would be hard pressed to work all these sites simultaneously.

For these reasons, we do not favor the existing approach because we believe there is a better option.

Stricter Scrutiny Approach

We have experienced FERC's stricter scrutiny approach on several of our applications to date. Our experience with this approach encourages us to favor it over the other two approaches. There are two key areas of importance of this approach including limiting boundaries of the permits and semi-annual report scrutiny:

Limiting boundaries: A review of current wave energy permit applications can be sorted into two categories including full county applications that are technology "agnostic" and smaller area applications with specific technology descriptions. In some of these full county applications, it is noted that work has yet to begin on the technology type and therefore ALL the area in the county is required to be reserved. In these cases, it appears that the permit applications are too early for development to proceed. In our opinion, many of these new technologies require a certain depth of water, or distance from shoreline to be efficient and/or cost effective. As a result, applications that include large ranges of depth or distance from shoreline could indicate that the technology has not yet been chosen for the site, and therefore site development may not proceed quickly, or at a commercial rate.

There are two cautions to these statements. First, most of the applications are filed for more surface area than they will actually use. This allows for movement due to seabed features or in order to move away from favorite fishing areas, if possible. Second, there have been applications for technology comparisons. In this case, a larger range of depth and/or distance from shoreline may be appropriate. Even in this case, however, requesting ALL the land should still be a flag for an immature siting plan.

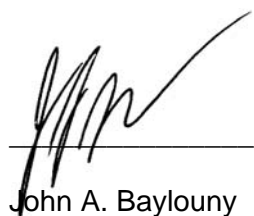
Semi-Annual report Scrutiny: We believe that these reports will be instrumental in determining if a developer is making significant progress on a particular site. This scrutiny should incorporate measures to ensure that sites are not banked for later development or sale. In addition, it should allow for termination of permits of slow-moving or under-defined programs. This will have the effect of reducing the number of permits by companies without the financial resources or without mature technologies to develop them.

Decline to Issue Preliminary Permits for New Technology Projects

Declining to issue permits may have a negative effect on the industry. It is likely that investment will be much lower in site development without priority and any such development that is undertaken will take more time. In addition, the investor and customer communities will be more inclined to work with the developer when they have priority on a site.

We prefer the Stricter Scrutiny approach over the alternative approaches.

OPT would like to thank FERC for the opportunity to provide these comments and hopes that the NOI process results in a fair process that meets the needs of the industry to get to market quickly while addressing environmental concerns.



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