



Portland General Electric Company
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April 23, 2007

ELECTRONICALLY FILED

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Docket No. RM07-8-000: Preliminary Permits for Wave, Current, and
Instream New Technology Hydropower Projects
Comments of Portland General Electric Company**

Dear Secretary Bose:

Enclosed for filing with the Commission on behalf of Portland General Electric Company ("PGE") are PGE's Comments in the above proceeding.

Please don't hesitate to call me (503) 464-8864 with any questions or comments regarding this filing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Julie A. Keil", written in a cursive style.

Julie A. Keil, Director
Hydro Licensing

UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Inquiry and Interim Statement)	
Of Policy Regarding Preliminary Permits)	
For Wave, Current and Instream New)	Docket No. RM 7-8-000
Technology Hydropower Projects)	
)	

COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY

On February 15, 2007, the Federal Energy Regulatory Commission (the “Commission”) issued a “Notice of Inquiry and Interim Statement of Policy Regarding Preliminary Permits for Wave, Current and Instream New Technology Hydropower Projects” in Docket No. RM07-08-000 (“NOI”).¹ The NOI established an interim policy, pending the outcome of the NOI proceeding, pursuant to which “strict scrutiny” will be applied to preliminary permits for wave, current, and instream new technologies (“New Technologies”). In the NOI the Commission sought comments on how it should treat applications for preliminary permits for hydropower projects involving proposals to utilize New Technologies to develop hydropower. The Commission also sought comments on its administration of such permits, once issued. On February 16, the Commission issued the first preliminary permit implementing the strict scrutiny policy. *Reedsport OPT Wave Park, LLC*, 118 FERC ¶ 61,118 (2007).

Portland General Electric Company (“PGE”) strongly supports the development of sustainable energy sources, including ocean power, and commends the Commission

¹ 72 Fed. Reg. 9281 (Mar. 1, 2007).

for its leadership in undertaking this inquiry. PGE is submitting these comments in response to the issues raised in the NOI, as implemented in the *ReedSPORT* order.

Interest of Portland General Electric Company

PGE is an integrated electric utility serving nearly 1.5 million people in the Portland metropolitan area. The Company's service territory covers more than 3,000 square miles and contains 45 percent of Oregon's population and 60 percent of the State's economic base. PGE is the licensee for four hydro projects with a total installed capacity of 578 MW. PGE is also actively involved in the development of new generation technologies and is seeking to add such technologies, which include ocean tidal and ocean wave generation, to its generation mix.

Relative to the Atlantic and Gulf coasts, the Pacific coastline of the United States has unique potential for development of ocean tidal and ocean wave technologies. Oregon's Pacific coastline is approximately 400 miles long. At this time, no one knows how many feasible ocean power sites are located along this coastline; but it is clear that there is enormous potential for the development of New Technologies along the coast. The State of Oregon has been a national leader in exploring this potential; and PGE has a strong interest in the development of Commission policies that foster and support this potential.

As a public utility, PGE has developed an integrated resources plan and is committed to the development of sustainable alternative sources of generation, including wind and ocean power. PGE has also pioneered renewable technologies. Thus, in 1997, it made the first Oregon wind farm possible by agreeing to buy 100 percent of the output of the 25 MW VanSycle Ridge Wind Farm. Since December 2005, PGE has purchased

100 percent of the output of the 75 MW Klondike II Wind Farm. Most recently, PGE has invested in the Biglow Canyon Wind Project, a project that, when fully developed, will produce between 350 and 450 MW of sustainable renewable power, enough to power 100,000 homes. This would make it one of the largest wind power projects in the region.

PGE's commitment to sustainable energy generation is also demonstrated by several recent honors:

- PGE has been recognized this year as the nation's top utility for marketing renewable energy. It was named by the U.S. Environmental Protection Agency and the U.S. Department of Energy as the 2006 Green Power Program of the Year.
- In March 2006, a National Renewable Energy Laboratory survey ranked PGE number one nationally in terms of renewable energy sold to residential customers in 2005.
- The same survey ranked PGE number two nationally for renewable energy sold to all residential and commercial customers combined.

PGE's interest is to encourage the maximum possible responsible development of this promising resource in order to accelerate development of the resource and maximize Oregon's role in developing it. PGE is investigating the possibility of developing ocean power generation and has a strong interest in buying economic wave power to diversify its renewables supply portfolio.

Importance of this Proceeding

The emerging consensus on the significance of the threat posed by global warming only serves to highlight the critical importance of developing significant new sustainable sources of energy generation. As the Commission itself noted in the NOI, the potential for wave and current power could be more than 350 terawatt hours per year. This would more than *double* current hydropower production. Yet, the technologies that

would produce this much-needed energy are in their infancy. None have yet been developed on a commercial scale in this country, and the environmental impacts, are not yet fully understood.

While there are many factors that affect the viability of a given technology or an individual project, PGE believes that regulatory processes play a key role in determining the success or failure of New Technologies in the United States. The Commission is positioned to have a decisive impact on these regulatory processes; it can tailor these processes to foster the development of New Technologies, or it can, through a continuation of existing policies, create an unfriendly environment that will impede the timely development of this energy source. PGE believes that the NOI demonstrates the Commission's commitment to reduce regulatory barriers and offers these comments to assist the Commission to develop improved regulatory processes that will foster the development of New Technologies and bring them to commercial use as quickly as possible with appropriate environmental mitigation and without undue regulatory burden or delay.

PGE believes that, in order to support the success of New Technologies as an integral part of the Nation's energy policy, the Commission's preliminary permit process should encourage fair and vigorous competition among qualified developers for viable sites. To do this, the Commission should approach preliminary permitting of New Technologies with five overall goals in mind:

- First, and foremost, the Commission should facilitate the use of short-term demonstration projects to evaluate environmental impacts and increase the relevant knowledge base.
- Second, the Commission should employ the maximum flexibility provided by law.
- Third, the Commission should regulate with the lightest possible hand.

- Fourth, for the near-term, the Commission should seek to develop a broad-based information base that will facilitate expedited licensing in the future.
- Fifth, the Commission should consider a thorough re-examination of its permitting and licensing processes to take advantage of the information base that it develops and permanently expedite the licensing of New Technologies.

Demonstration Projects:

In *Verdant Power*, the Commission allowed a permittee to conduct an 18-month *in-situ* evaluation of its proposed tidal-energy project in the East River in New York City. *Verdant Power LLC*, 112 FERC ¶ 61,143 (2005). The Commission originally conditioned its approval on a requirement that the project not be connected to the interstate power grid; but it subsequently relaxed this condition if the power was not sold. PGE believes that this approach is too narrow and that the Commission should for the next three to five years routinely allow New Technology demonstration study projects that sell power for the term of the permit, provided that all revenues from the sales are devoted to funding and carrying out activities pursuant to the permit. This will create a process that embraces the opportunity to facilitate the installation of demonstration projects, learn about their operations and impacts, and collect data that will enable the Commission to thoroughly evaluate environmental impacts.

In this regard, PGE agrees the with reasoning of Commissioner Kelly in her concurrence in *Verdant Power*, in which she concluded that a demonstration project during a preliminary permit does not amount to the development of electric power under Section 23(b) of the Power Act. PGE believes that a demonstration of a New Technology project is not materially different than the studies that would be conducted under a permit for or during relicensing of a conventional project. The only difference is that there are no New Technology projects to study yet, and there can be no permanent projects until

licensing has been completed. Of course, licensing cannot be completed without studies of the impacts of these projects, and impacts cannot be studied without some technology in place to study. Given the nature of all generation technologies, they cannot effectively operate unless connected to real loads, which in turn must be connected to the interstate grid.

Imposing a requirement that a demonstration project not sell power that it produces is counterproductive, because it increases the cost of studying these projects; and it is inconsistent with the Commission's desire to ensure the viability of applicants for preliminary permits for New Technology projects. A better approach would be to allow demonstration project less than 1.5 MW to be installed and connected to real loads, provided that any revenues realized during that period be devoted to activities under the permit. This would not make a permit self-supporting, but it would reduce the out-of-pocket cost of getting to a license application.

The Commission could also, as a condition of allowing demonstration projects to proceed in this manner, require that all information as to environmental impacts be made available to the Commission and the public, so that a sufficient base of knowledge could be developed to facilitate the expeditious licensing of New Technology projects in a variety of settings. For this reason, the Commission could limit the policy of granting authority to sell power from demonstration projects to a defined period, such as five years, after which it would reevaluate the success of the policy to foster the development of New Technologies and determine if other steps, such as development of a programmatic environmental impact statement, based on the information gathered, would be appropriate.

Preliminary Permits for New Technology Projects

PGE supports the Commission's proposed "strict scrutiny" policy, but suggests that it be applied in a less rigid and more streamlined manner that will promote competition without imposing unnecessary and ultimately counterproductive procedural requirements. To do this, the Commission should use tightened requirements for preliminary permit applications as a filter to weed out speculative or non-viable applicants. Thereafter, however, the Commission should allow permittees to follow a variety of licensing approaches and should use existing reporting requirements to ensure that whatever approach is adopted is adhered to strictly.

Preliminary Permit Applications:

First, the application for a preliminary permit should clearly define a *limited* geographic area in which the proposed project would be located. The Commission has expressed concerns about site-banking in other contexts, and it appears that this concern is applicable to the development of New Technology projects as well. The simplest and most effective way to limit site banking is to require each applicant for a preliminary permit to define the precise area in which its proposed project would be located. Applicants could seek permits for more than one proposed project, but their ability to do so would depend upon their ability to demonstrate financial capability for *each* proposed project, as discussed below.

Second, the permit application should contain a more detailed and substantial demonstration of the applicant's financial capability to undertake the activities that are proposed during the term of the requested permit. Financial capability could be demonstrated in a number of ways, and the Commission should not unduly limit the ways

in which financial capability is demonstrated. For example, utilities or licensees for a number of existing hydro projects should be able to make a satisfactory demonstration by reference to corporate filings, annual reports, or published bond ratings. In other cases, the existence of a grant agreement might provide the necessary demonstration. PGE recognizes that it will be more difficult for newly-formed or more thinly-capitalized developers of New Technology projects to make the necessary showing. In this regard, it may prove that the best way for a new developer of New Technology projects to make the required showing is to apply for a permit through a joint venture with a more established entity.²

If the Commission is to scrutinize the financial capability of permit applicants, it must also be sure to consider whether the applicant has applied for multiple permits, and whether it has made an independent showing of financial capability in each case. PGE certainly does not seek to unduly burden such developers. However, the benefits conferred by a preliminary permit, and the possible “chilling effect” on competition in the area covered by a permit should not come into play if the proposed developer does not have a realistic opportunity to complete the permit process successfully.

Third, the applicant should include a *detailed* plan and schedule for the activities it will undertake to study the feasibility of its proposed project. At this time, PGE believes that the applicant should have a fairly free hand to lay out those activities and, as discussed below, to choose the approach to licensing that it will adopt. Thus, the applicant could commit to following the Commission’s ILP, or it might opt for the TLP or ALP. That plan and schedule should include the six-month reports required of all

² While the Commission may not be willing to modify its policy regarding “hybrid” applicants or to allow the transfer of preliminary permits, it can make clear that such joint ventures would be permissible if the applicant were not seeking to take advantage of the municipal preference.

permittees, and should spell out, for each report, the milestones that are to be achieved and reported on in that report. Once the permit applicant has done so, it should be held to the plan and schedule it has laid out.

At present, the Commission appears to be requiring that permittees provide this schedule and plan within 45 days of permit issuance. This makes sense as an interim matter, until a fully fleshed-out strict scrutiny policy is established. However, it would expedite the application process and provide an additional demonstration of an applicant's capabilities to move this requirement into the application for a preliminary permit.

Fourth, the project description contained in the permit application should require the applicant to identify its proposed technology and how the particular site's resources may be utilized. Identification of the proposed technology should include providing a brief description demonstrating that the application is based on specific technology, as opposed to a vague assertion that the applicant will find an appropriate technology to deploy. Applicants unable to provide this level of information may not be prepared to proceed with development, which could prevent the site from being utilized by other developers who are better prepared to proceed. Such applications are likely premature and should be carefully reviewed under the strict scrutiny approach. Nonetheless, the threshold for the technical description of a New Technology project should remain low to promote innovation and competition. However, PGE does recommend that, although not required by existing Commission regulation, permit applicants should be required to provide some site specific information in lieu of unit size and capacity information. This information could include a preliminary assessment of the flow velocity or wave

characteristics as appropriate, based upon public information such as tidal charts, National Oceanic and Atmospheric Administration buoy data, United States Geological Survey data or other information. Based on this information, applicants should provide a general assessment of how much energy will be developed from the project. Energy capacity may be validated by detailed field studies conducted during the term of the preliminary permit and thus subject to revision in the permit progress reports and actual license application.

Reporting and Commission Oversight:

As noted, preliminary permits already contain a requirement to file progress reports every six months; they also provide that the permit may be canceled for failure to prosecute the permit activities diligently or for good cause. These permit conditions provide sufficient authority for the Commission to ensure that holders of permits for New Technology projects are carrying out the activities spelled out in their applications and that they are meeting the milestones they have laid out. While there are certain to be delays and changes in plans, which an applicant can explain in its progress reports, the failure or inability to meet the self-imposed deadlines could provide good cause to cancel a permit and thus allow another developer to evaluate the site.

In cases where a permittee seeks a subsequent permit, a key element of its application would be the demonstration that it had timely met its obligations pursuant to the first permit. Similarly, this demonstration would be a key element of the Commission's decision whether to grant a subsequent permit.

Need for a Preliminary Application Document:

In recent orders granting permits and applying the new strict scrutiny policy, the Commission has, in addition to requiring the filing of the plan and schedule for permit activities within 45 days of permit issuance, required the filing of the Preliminary Application Document (“PAD”) and Notice of Intent (“NOI”) to file a license application within one year of permit issuance. The PAD and NOI are the first steps in the Commission’s recently-established ILP, and would be appropriate requirements were an applicant to follow the ILP to license its New Technology project.

PGE is a strong supporter of the ILP. It was actively involved in the development of the ILP and believes that it represents a significant improvement in the process for licensing hydro projects. At the same time, however, it is clear that the ILP was not designed with New Technology projects in mind, and it is not yet apparent that the detailed requirements of the ILP are applicable to New Technology projects, or that they are the best way to license them. This is particularly true, since the three-year term of a preliminary permit is too short to allow completion of the ILP as spelled out in the Commission’s rules. For this reason, PGE urges the Commission not to require all permittees for New Technology projects to file the PAD and NOI. For the time being, the Commission should allow applicants to choose the process they will follow. The Commission should then use the six-month progress reports to require them to meet the schedule that they have laid out for themselves.

Next Steps: Moving beyond the NOI:

The Commission’s rules governing preliminary permits were developed to address the development of conventional hydro projects and have been essentially

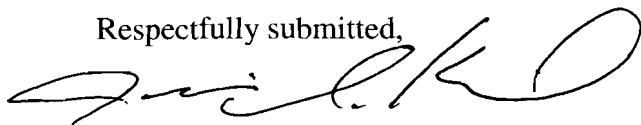
unchanged for 20 years. They were developed – and are appropriate for – conventional hydro projects on the nation’s rivers and streams. As the NOI recognizes, they may be less applicable to projects using New Technologies. The rules predate both the ILP and emergence of New Technologies. Thus, the term of the permit does not mesh well with the ILP process; and the various study and consultation steps may not fit with the study requirements associated with New Technology projects, particularly in an off-shore environment.

PGE urges the Commission to initiate a thorough review of its permitting procedures, as they apply to New Technologies, to determine if the time is not ripe for a new approach, much as the Commission has recently done in the adoption of the ILP. In this regard, PGE urges the Commission to consider initiating a proceeding to consider whether and how to modify the preliminary permitting process, at least as it applies to New Technology projects. PGE is familiar with the comments submitted in this proceeding by Longview Associates, and believes that the process outlined in those comments would provide a well-thought-out starting point for such an inquiry by the Commission.

Conclusion

PGE commends the Commission for its commitment to fostering New Technologies, as illustrated by the initiation of this NOI. PGE is appreciative of the opportunity to provide these comments and looks forward to working with the Commission to develop a more appropriate regulatory approach to the development of New Technologies.

Respectfully submitted,



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