



ORIGINAL

July 17, 2006

Honorable Magalie Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

2006 JUL 18 P 4:14
FEDERAL ENERGY REGULATORY COMMISSION

**Re: (Motion to Dismiss Verdant Power, LLC's Motion to Intervene and Protest)
P-12663-000 Washington - Deception Pass Tidal Energy Project**

Dear Ms. Salas:

Washington Tidal Energy Company ("WATidal"), a subsidiary of Oceana Energy Company, hereby submits its Motion to Dismiss the Verdant Power, LLC ("Verdant") July 3, 2006 Motion to Intervene and Protest WATidal's Preliminary Permit application for the Deception Pass Tidal Energy Project. We believe that the Motion to Intervene is outside of the scope of Verdant's legitimate interests and that Verdant's entire filing is based on inaccurate assumptions and unfounded credibility attacks that warrant dismissal of Verdant's request for lack of merit.

Verdant's Motion to Intervene

A. Verdant maintains that as a "serious developer with the knowledge and capability to develop Kinetic Hydropower projects" it has a strong interest in Commission actions that may have the effect of supporting an unqualified company in its quest, against Commission policy, to bank prime potential Kinetic Hydropower sites.

We do not reject Verdant's assertion that it may have an interest in Commission actions that would reward unqualified site "bankers." However, our company is neither incompetent nor interested in selling sites. In fact, Verdant's assumption shows its fundamental lack of understanding of the nature of Preliminary Permits because they are not transferable, meaning there is no mechanism by which WATidal or Oceana could sell the site(s).

Furthermore, Verdant provides no accurate basis to support its statement that WATidal is unqualified. Attacking the integrity and qualifications of our management team (without knowing who we are) raises serious questions about the judgment and responsibility of Verdant's management.

B. Verdant asserts that is has unique and substantial interests that may be affected by this project; interests that will need to be addressed at the appropriate time.

We believe that the appropriate time for Verdant to describe its “substantial interests” and how they may be affected by the Deception Pass project was in its Motion to Intervene. Instead, Verdant provides no compelling basis for why it should be granted intervenor status in this proceeding beyond its wild and unfounded accusations that WATidal is unqualified and intends to bank sites.

Conclusion on Verdant’s Motion to Intervene

Because Verdant has no proximity, oversight or other legitimate interests in the Deception Pass project and has failed to provide any evidence to support its claims that it does have “substantial interests,” we respectfully request denial of Verdant’s Motion to Intervene for failure to provide adequate grounds upon which intervenor status may be granted. Furthermore, WATidal should not be burdened by the necessity of having to respond to such frivolous and erroneous filings by Verdant in the future, and respectfully requests dismissal of Verdant’s Motion to Intervene on such basis.

Verdant’s Protest

- A. Verdant protests the Deception Pass application because WATidal’s parent company, Oceana, does not identify a specific technology in its applications, lacks clout in the industry, relied on EPRI as a source of information, intends to “bank” the sites for private gain, and should be required to meet certain minimum requirements.**

The primary reason none of the applications point to a specific technology is because WATidal recognizes that there must be a sequence of events leading up to the selection of a final technology that fits a particular site. A key purpose of Oceana’s requests for Preliminary Permits is to assess site characteristics and match them with compatible technologies. Oceana was only able to describe the technology in general terms because, after visiting and evaluating sites where some of today’s leading technologies are being piloted, we were unconvinced that EPRI had identified a technology that was commercially satisfactory for a full range of sites, including the Verdant technology. Commitment to a potentially incompatible technology at such an early stage would have shown a clear lack of understanding of the opportunity for developmental progression between preliminary and follow-on permitting processes.

Verdant is correct to note that Oceana is not well known in the tight-knit tidal energy industry at this time. Our company has developed a business plan, secured financing, produced technology designs, submitted patent applications, executed a research and development agreement with the U.S. Navy, committed to a prototype construction and testing schedule, submitted numerous Preliminary Permit applications, and begun the process of identifying municipal and utility partners without much advertisement. There is no regulatory requirement that a company reveal its internal business plans to the rest of the industry in order to be competent and legitimate.

Although Oceana is familiar with EPRI and its work in the tidal energy field, our methods of selecting sites was based on data provided by NOAA and local sources. Some of the

data on current velocities we relied on was the same as that used by EPRI, so there was some overlap among sites considered potentially favorable. Specifically, Oceana has four sites that overlap EPRI's feasibility sites: the Penobscot River (filed 3/30/06), Piscataqua River (filed 3/28/06), San Francisco Bay (filed more than a year ago), and the Vineyard Sound, Massachusetts site. However, we filed for three of these sites months before EPRI's feasibility reports were even issued: for Maine (April 2006) and for California (June 2006). The fourth site, in Vineyard Sound, was studied by EPRI but not rated as highly for development as one on the far side of Martha's Vineyard, a site for which we did not apply.

The majority of Oceana's proposed study sites, including its four proposed study sites in Alaska, its Kennebec study site in Maine, and its Astoria, New York site were not focused on by EPRI in the subject reports. Also, the article cited by Verdant as evidence of Oceana's reliance on the EPRI study contradicts logic. In the article, EPRI clearly states that the site chosen by Oceana was ruled out by EPRI. Nevertheless, any reliance on the EPRI work, even if it had occurred, is a bizarre basis on which to protest the Deception Pass application.

Verdant's assertion that WATidal and Oceana intend to "bank" the sites in a manner similar to "dot.com exploiters" shows a fundamental lack of understanding of the nature of Preliminary Permits on Verdant's part. Preliminary Permits are not transferable, meaning there is no mechanism by which Oceana or the TECs could sell the sites. Notwithstanding the absence of a "banking" vehicle, Verdant uses questionable and irresponsible judgment in suggesting that our intentions are contrary to the public interest and the purposes of the Federal Power Act.

WATidal agrees with Verdant that applicants should be required to meet certain minimum requirements in order to receive Preliminary Permits. We believe that there are companies in existence who seek to acquire sites and market them at some time in the future when technologies mature without any intention of ever undertaking development efforts. However, we are not one of those companies and we also believe that the progress reporting process will be a sufficient mechanism for scrutinizing permitting activities and eliminating these so called "dot.com exploiters."

Verdant's numerous "policy" protests are ridiculous and lack sufficiency to warrant denial of the Deception Pass application. Indeed, if Verdant truly opposed Oceana's activities on policy grounds, it would have protested the issuance of permits to ORPC Maine, LLC and ORPC Alaska, LLC, which applied for the exact sites identified by the EPRI study and even utilized the services of the same engineering firm EPRI used to conduct its site investigations.

B. Verdant contends that the Deception Pass application should be denied because developers with real development goals will be at a competitive disadvantage.

Verdant considers itself a bonafide developer despite having never commercialized a device after four years of holding Preliminary Permits for its East River site. The Commission can surely understand that Verdant is concerned about a competing company beating Verdant to market because of a superior business plan with financial backing. In WATidal's opinion, Verdant itself is responsible for any competitive disadvantage because it has repeatedly failed to progress its advertised development schedule. Real development goals and real development results must be differentiated.

C. Verdant asserts that awarding permits to companies like WATidal that realistically stand no chance of filing for a license within the period of any preliminary permit delays the development efforts of bonafide developers for at least three years.

Verdant argues that because WATidal does not have its own tidal technology or an agreement to license a third party technology, it will need far more than three years to prepare a license application. In making this statement, Verdant incorrectly concludes that WATidal does not have a technology of its own. As indicated in its July 10th filings, Oceana has applied for patents for its own technology, and has financial backing and a contract for research and development with the U.S. Navy to test and optimize that technology in parallel with its site development evaluations during the Preliminary Permit timeframe. Thus, WATidal will have available to it the “Best Available Technology” for site development.

Furthermore, Verdant implies that because it has not been able to accomplish the filing of a license application within three years that WATidal will certainly be as unsuccessful. We fail to see any connection between our project activities in Washington and Verdant’s project activities in New York, and thus we see no reason why we will not be successful. In addition, we have chosen not to use Verdant’s permitting consultants.

In characterizing WATidal as outside of “real developer” status, Verdant seems to suggest that if another “real developer” were to seek to permit the Deception Pass site, Verdant would not object. Therefore, now that WATidal has disclosed that it has its own technology and a plan based on use of the best available technology, Verdant should no longer object to the Deception Pass application.

D. Verdant reasserts that applicants should be required to meet certain minimum requirements and argues that the Commission should summarily reject applications filed by companies that have not demonstrated any assets or technology.

WATidal and Oceana have submitted all information regarding their corporate status as requested by the Commission and will comply with further requests for information. We have previously offered to supply evidence of our financial status so long as certain details about our private investors remain confidential. WATidal suggests that Verdant similarly offer to disclose the same for verification of its ability to complete its development goals or forfeit its New York RITE Project permit.

Furthermore, Verdant once again inaccurately relies on its assumption that WATidal has no technology in comparing our knowledge of tidal energy technologies with that of a “grade school child” on the Internet. Interestingly, Verdant’s own proposal in New York to locate 500 devices in direct alignment over less than 2,000 meters is apparently grossly inconsistent with the EPRI evaluation criteria. In any event, Verdant’s arguments are founded on incorrect speculation and hold no technical merit, as we and EPRI (in its feasibility studies) agree that a developer would be ill-advised to state with specificity the nature of an installation array without first conducting the proposed detailed environmental studies at the site and assessing technological compatibility. These pre-development activities are the reason Preliminary Permits exist.

Conclusion on Verdant's Protest

Verdant has attacked the integrity of our management team, used speculative and inaccurate information to reach its conclusions, and generally avoided explaining how the issuance of the Deception Pass permit violates applicable statutory or regulatory requirements. It is clear from the nature of the arguments that Verdant is more concerned about market competition and less about hydropower policy. Accordingly, WATidal respectfully requests that the Commission disregard Verdant's erroneous objections and approve the Preliminary Permit application as submitted.

Please feel free to contact us if we can be of any assistance to the Commission. Thank you for your consideration in this matter.

With regards,



Mike Hoover
General Counsel
202-494-9232

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.
Dated on this 17th day of July, 2006.



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