

**COMMENTS OF LINDA CHURCH CIOCCI  
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**BEFORE THE HYDROKINETIC TECHNOLOGIES PILOT PROJECT WORKSHOP  
PORTLAND, OREGON  
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Good afternoon Commissioners Moeller and Wellinghoff. I am Linda Church Ciocci, Executive Director of the National Hydropower Association (NHA). I extend our appreciation for the opportunity to present our initial comments on FERC's proposed pilot project licensing process for ocean tidal and instream hydrokinetic technologies. We also thank you for this opportunity to learn more about how the industry, stakeholders, and regulators can collectively work to implement this important and critical new tool in licensing these emerging technologies. Let me say at the outset, NHA understands that this process will, in fact, be made available for instream hydrokinetic projects. We would appreciate any definitive clarification you can offer on this matter today.

**NHA's Interest on Ocean, Tidal and Hydrokinetic Technologies**

NHA represents more than 65% of the non-federal share of the hydroelectric industry – conventional hydropower. In addition, NHA has a number of member companies that are currently involved in the development of ocean, tidal or instream hydrokinetic projects. They are developers, consultants working with developers, or utilities aggressively investigating their options for clean energy resources by exploring the tremendous potential these new technologies hold for their individual companies.

In fact, more than 30 of our member companies have joined together in the creation of NHA's Ocean, Tidal and New Technologies Council. The Purpose of this Council is to share information and focus expertise toward the removal of impediments to development. This includes issues relative to financing and economic incentives, research and development, and licensing and permitting. NHA has a long history and expertise in the regulatory arena. We bring that expertise to this topic of licensing ocean and other hydrokinetic technologies.

### **Focus of My Remarks**

My remarks this afternoon will focus on the following areas:

1. the importance of this creative approach to licensing;
2. the criteria by which FERC will determine whether a project is eligible for using, what I like to call, a smarter, more efficient process;
3. the license term;
4. issues relative to process timelines and license requirements, particularly those regarding baseline information and the need to balance stakeholders' information requests with developers' desire for an efficient and expeditious process;
5. the importance of financing; and finally
6. transition issues as they relate to moving to a full commercial license.

My comments today are our attempt to highlight the important issues. NHA will be providing more detailed, in-depth comments following this workshop. We view today's discussions as an opening to delve further into how the proposed process might work and to listen and learn from other stakeholders and the Commission as we finalize our comments on the proposal.

## **The Importance of This Proposal**

Let me begin by commending the Commission for its leadership in proposing the pilot license process. It is creative, bold and an important move. We applaud the Commission's willingness to take action so quickly after the December 6 workshop of last year. We support your effort to find an appropriate solution to the issues raised on permitting and licensing hydrokinetic technologies and we believe FERC is certainly headed in the right direction.

Since NHA's April 2004 meeting where we brought the resource agencies, industry, stakeholders and FERC staff together to first discuss the necessity of a new licensing process for the new technologies (as well as small hydropower), the Association has urged FERC to consider a smarter, efficient, yet responsible licensing process that meets the unique needs of the emerging ocean, tidal and instream hydrokinetic industry.

This nascent industry faces several hurdles as it strives toward development and deployment. Taken alone, they are major impediments, and when placed in the context of a long and perhaps costly licensing scheme, they are compounded exponentially.

Again, since 2004, the more we spoke with industry – both developers and utilities – and other stakeholders, including the resource agencies and conservation organizations, it became clear to us that these technologies could not withstand a 5-year or more licensing process that is based on known information with expected outcomes and that requires significant fiscal resources. Most of these projects simply do not fit in that norm.

One of the major problems, of course, rests with the need for information. Resource agencies simply require more data about impacts – how these machines affect riverine and marine species. We certainly understand and fully appreciate this need.

As such, NHA argued for a process that would allow the industry to enter into a testing phase where the unknowns could be answered to the fullest extent possible, data collected, and where all stakeholders could move forward in the permitting and licensing of these projects with a relative degree of comfort. Timing was important. The process also had to take into consideration the need of developers to prove commercial viability and attract capital within the relatively short attention spans of financial backers. This was a tall order.

In short, we understood the problem, but we did not have the solution. What we did know is that we needed a licensing process:

1. that was relatively short – 6 to 12 months – certainly no longer than 18 months;
2. that would allow both machines and sites to be tested and investigated to gather information;
3. that would include and vest resource agencies and other stakeholders so at its end they could comfortably accept outcomes; and most importantly
4. that facilitated that support of financial backing or provided revenue support. Developers need to earn revenue while in the testing phase to underwrite and prove market potential through to commercial success.

While we had not yet come to the ultimate solution with a specific process, we believe that the creative approach FERC has put forward with its pilot licensing proposal does indeed offer a workable framework, and we wholeheartedly endorse it. That said, we realize that there are questions and clarifications that need to be addressed. But ultimately, we believe that the approach is sound and we look forward to working with FERC as you fine tune the process.

### **Eligibility Criteria**

FERC proposes that the eligibility criteria to determine whether a project may use this pilot process rests on 4 points: 1) size – 5 Megawatts or smaller; 2) siting – with concern to environmentally sensitive areas; 3) testing of equipment or site purposes only; and 4) equipment must be easily removed.

NHA supports this criteria, though we raise a few issues to consider. First, we understand the need to ensure that projects are not sited in environmentally sensitive areas. We encourage FERC to better clearly define what is meant by this term. A specific listing of sites – sanctuaries, reserves, etc, -- would be helpful and would prevent developers from assuming costs to develop such sites when they are off limits from the beginning. Such a list could be compiled using current officially designated areas as developed by the various governmental agencies.

In addition, on the matter of project size, while NHA supports the 5 MW standard, we believe that there may be cases where a developer and also other stakeholders would support a larger pilot project in order to better study impacts and to glean more information on larger machines. Consequently, NHA would urge FERC to approach the size criterion with some flexibility.

## **License Term**

The process proposes a license term of 5 years. NHA would suggest that FERC also consider some flexibility with this standard. While not all of these pilot projects may file for a long term commercial license following the pilot phase (for a variety of reason), those that do will need to begin that process at least two years before the pilot license terminates. In addition, some projects may require more than three years to collect the necessary data for a full commercial license.

We suggest that FERC consider some flexibility to allow such projects up to a 7-year license term. This would allow a full 5 years to test and 2 years to prepare the commercial license application and subsequent filings. As an alternative to a longer license term standard, NHA recommends the Commission consider a mechanism by which a pilot testing phase could be extended, perhaps with a showing of good cause by the licensee, so as to be mindful of the need to prevent site banking.

## **Process Timeline and License Requirements**

FERC has proposed a workable timeline – 6 months. It is efficient and expeditious and we support it. In order for the timeline to work; however, FERC will need to closely manage the process and pay particular attention of adherence to it.

One major factor that could impact the timeline is the issue of what agencies are involved; the level of their participation, and what information is expected at the time of pilot license filing. For example, does the Clean Water Act Section 401 apply to some of the technologies? If so,

how will that process be built into the pilot process and what may be expected in terms of information.

Baseline information needs present a tremendous issue. NHA believes the baseline information required as part of the pilot license application filing should be limited to existing available data. Project developers should not be expected to perform pre-application studies. However, these information requests should be made a part of the monitoring component of the 5-year license term. After all, one of the main objectives of the pilot license is to collect data in order to build the information base on equipment performance, site specifics, environmental issues, and impact.

The issue of how states, in the case of Section 401, or the resource agencies are engaged in this process is critical. While this is a FERC process, the other stakeholders need to be fully vested in the process for its ultimate success. Finding the appropriate balance so that all stakeholders feel comfortable, have an opportunity to get the information needed to move forward with development, while keeping the process moving expeditiously, is critical.

NHA encourages the Commission to continue its outreach efforts to the states, agencies, stakeholders and industry as it continues to refine the pilot license process. This workshop is an excellent start and NHA pledges its cooperation to work with FERC in any additional forums it decides are necessary to clarify or expand on the details of the process. A clear understanding of the process will hopefully ensure that all are vested in its success and result in mutual acceptance of study plans, monitoring and results.

While NHA recognizes the need for further clarification on details and additional outreach, we do request that FERC not delay in implementing the proposed process as it conducts these activities. We believe that FERC can move quickly to consider projects under this new process. Much like the experience under the Integrated Licensing Process (ILP), we can learn as we go along and make the necessary adjustments based on the actual experiences of those pioneer projects.

### **Financing**

As noted earlier, perhaps one of the most essential components of a proposed pilot licensing process for these emerging technologies is the ability to develop a revenue stream as the project is in its testing phase.

Most developers do not have the resources to support these projects through licensing while simultaneously perform costly studies, prove commercial viability, and build a base of environmental data. They must attract commercial investment. For the most part, investors are looking for a much shorter return with far better certainty. Consequently, these projects can be marginal at best. The fact that the process allows projects to sell energy to the grid during the pilot stage, thus creating a revenue stream to meet these expectations and to help offset the need for large financial backing, is critical.

NHA wholeheartedly endorses this provision, which provides an immediate market for these projects, and believe it is one of the key ingredients that must be maintained going forward.

## **Transition Issues**

While not all pilot projects may choose to move to a full commercialization of their technology at a particular site and file for a long term license, it is our hope that many will. Ultimately, our goal should be to nurture clean, climate-friendly and environmentally sound technologies in order to offer our nation the most options for clean energy alternatives. The issue of how a project moves from the pilot phase to a full commercialized project with a long term license needs to be more fully considered.

We have raised one issue regarding the term of the pilot license and the timing of preparations for a license application under the ILP. We believe there may be others. In addition, we believe that more thought should be given to how the preliminary permits, pilot license, and the ILP work together as an overall process. For example, when a pilot licensee takes the next step to a commercial license is that process considered a relicensing or not.

A number of questions have been raised by our industry members regarding these issues, including questions focusing on competition and the priority status of applicants to sites under various scenarios. These include competing pilot license applications, preliminary permits competing with pilot license applications, and pilot license applications competing with original licenses or relicensing of conventional projects.

While we are not prepared to delve deeply into these questions today, NHA will be covering them in our official comments to be filed following this workshop.

## **Conclusion**

In conclusion, NHA supports the proposed pilot licensing process for hydrokinetic projects. We endorse this process for ocean, tidal and instream hydrokinetic projects and applaud the Commission for its vision, boldness, and creativity. We believe it is a workable framework and support FERC's move to make it immediately available for use.

At the same time, we urge the full support of the resource community and other stakeholders and encourage FERC to find the appropriate means by which we can quickly come to a final and well defined process. Ultimately, we believe that the process must develop trust, bring transparency, be expeditious, and build the knowledge base to support this industry – while at the same time recognize the precarious nature of the financial situation of developers. Again, it is a tall order. Yet we believe the proposed process is a very good start from which to build.

Finally, we reiterate that one of the most critical and important components of this proposal is the ability of project developers to sell power to the grid. This will make a major difference in the success of many projects and we commend FERC for taking this action.

NHA looks forward to working with the FERC and the many stakeholders as we fine tune the pilot process. We believe the Commission has established a workable framework that will lead to the development of more clean energy technologies – a goal that is important to our national security and critical to finding new solutions to combat climate change, which many say is the largest environmental challenge of our generation and perhaps this century.

Thank you.