

**COMMENTS OF THE OCEAN RENEWABLE ENERGY COALITION (OREC)  
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION (FERC)  
TECHNICAL CONFERENCE ON HYDROKINETIC ENERGY PILOT  
PROJECT PROCESS  
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Good afternoon.

My name is Carolyn Elefant and I am legislative and regulatory counsel to OREC, the Ocean Renewable Energy Coalition. Formed in April 2005, OREC is the national trade association for the marine renewables industry in the United States, with a goal of advancing and promoting the commercialization of wave, tidal and hydrokinetic power technologies.

Today's hearings bring to mind Alvin Toffler's aptly titled book *The Third Wave*. The Third Wave describes a phase of social evolution, where static bureaucracies are replaced by flexible organizations that adapt quickly to change and where one-size fits all solutions are replaced by customization. The Commission's proposed Pilot Project approach demonstrates the type of flexibility and innovation characteristic of the third wave society that Toffler envisioned – and OREC commends the Commission for helping to lead the industry into the future.

Today, I will address the specific question posed by the Commission: what are the opportunities and challenges presented by the proposed Pilot Process?

First, the opportunities. Most importantly, the six month pilot process, which culminates in the issuance of a five year license will enable developers to get demonstration projects into the water. The pilot approach therefore bridges the gap between the preliminary permit, which does not authorize construction or sale of project power and a full blown thirty year license, which can take as long as seven years to issue.

With a pilot approach, developers can show investors how projects work in real water conditions, which will drive the private investment necessary to support larger projects. A pilot license will give developers the opportunity to gather data about project

operations and to make changes to increase compatibility with the surrounding environment. Pilot projects provide developers with operating, durability and reliability data that is essential to the financing of these new technologies. Finally, because a pilot license enables developers to sell project power, the resulting revenues can help fund post-license monitoring initiatives. In short, a pilot process offers a potential win-win situation for both developers and stakeholders.

As to the challenges, the biggest hurdle to the proposed pilot project approach is making it work in a six month – or at the absolute maximum – one year period. Developers will have no incentive to use the pilot procedure if it take more than a year, if the costs associated with the process are prohibitive or if the required studies and monitoring are disproportionate to the anticipated impact of the pilot project. If the pilot procedure is too long or too costly, developers will simply move on to a full blown license process and the potential benefits of the pilot

In addition, the pilot approach will not work if completion of the pilot project is regarded as an end in itself. The pilot process must be viewed as a step towards the ultimate commercialization of these technologies. Quite simply, investors will not finance a project that can only operate for five years. But investors will assume the risk so long as pilot projects have a fair *opportunity* to expand to commercial size where developers can show that the technology works and there are no adverse environmental effects.

How can we make the Pilot Process work? Right now, the Pilot Process essentially condenses the 5-7 year ILP into a super-charged six month procedure. Unless we can eliminate or streamline the components of the ILP that cause delays, the Pilot

Process will be doomed from the start. To allow for completion of the pilot process in six months, OREC proposes the following:

FIRST, the pilot procedures must make clear that all informational requirements related to the description of site conditions and the surrounding environment can be based on existing, available data. Otherwise developers will be required to perform pre-filing studies which can take several years and cost millions of dollars. Ideally, the pilot approach should provide for deferral of all studies to the post-licensing or monitoring phase of the project. After all, that is the very point of the pilot approach: to give developers an opportunity to study projects in real water conditions which will result in production of more meaningful data.

SECOND, the Commission needs to bring other federal and state agencies with overlapping or related jurisdiction on board to minimize duplication of effort. The Commission can enter into MOUs with various federal and state agencies to assign lead responsibility for certain tasks. The Commission can also ask other federal agencies to take a close look at their statutory authority and consider approaches that might allow for deferral or waiver of a statutory authorization or a streamlined approach. For example, the Corps frequently issues nationwide permits for certain activities which in turn, sometimes leads states to waive associated Section 401 authority. Would the Corps consider a nationwide permit approach to complement the pilot license process – and can the Commission explore this possibility?

THIRD, the Commission should establish a wave/tidal liaison within the Commission. The liaison would serve as a clearinghouse of information for resource agencies and stake holders, facilitate negotiation of monitoring plans and keep

consultation discussions on track. In contrast to existing staff, the liaison would not prepare an environmental assessment or play a decisional role.

FOURTH, the Commission should begin to develop criteria to guide parties in developing the facility and operations assessment. Among other things, the criteria should specify that monitoring and post-deployment studies must relate to a specific project and must address realistic potential affects.

FIFTH, the Commission should not require developers to post a surety bond as collateral for potential decommissioning because it will significantly increase the capital costs of demonstration projects. In lieu of a bond, the Commission should allow a letter or credit or other proof of creditworthiness.

SIXTH, the Commission should allow for flexibility in applying the pilot project procedures. For example, while the 5 MW project size limit should automatically qualify developers to use the pilot process, developers should also have an opportunity to make a case for using the pilot process based on an alternative size criteria – such as percentage of full scale project or project footprint. The Commission should also approve pilot project licenses that result from use of alternative procedures or a settlement process agreed to by the stakeholders and approved by the Commission.

The Commission should also stay flexible with respect to the duration of pilot licenses. The five year limitation may prove to be overly constrained if the time period for regular licensing of a full project at the site is not shortened. The Commission should allow for the continuation of the pilot license when the holder also applies for a regular license for the site.

SEVENTH, the Commission should keep in mind that the pilot project process serves as a step towards commercialization. It should develop criteria for determining whether a pilot project is successful and can move forward to expansion or build out. And the Commission should also establish a protocol for determining priority of rights between preliminary permits, pilot licenses and licenses – which OREC will address at length in our written comments.

As I stated at the outset, the pilot process offers immense opportunities – not just for technology developers, but for resource agencies, stakeholders and the nation at large which will benefit from the commercialization of a new source of clean, renewable energy. Let's work together to make the pilot process work – or the opportunities that it offers will never materialize.