

UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

“Staff Guidance on Hydrokinetic Pilot Procedures Under AD07-14”)	
)	FERC Docket AD07-14-001
)	
and)	
)	
“Staff FAQs on Conditioned Licenses Dated 4/14/08 Under PL08-1”)	FERC Docket PL08-1-001
)	

REQUEST FOR REHEARING
by
LINCOLN COUNTY, OREGON

Lincoln County, Oregon, hereby joins in the “REQUEST FOR REHEARING OF ELIZABETH R. MITCHELL AND FISHERMEN INTERESTED IN SAFE HYDROKINETICS” filed May 12, 2008, in the above two referenced dockets. The contents of that filing are hereby incorporated into and made a part of this filing by this reference.

Lincoln County strongly supports the development of ocean wave energy for its global benefits, as well as its potential for local economic development. However, the siting of wave energy facilities in the ocean has a potential for direct conflict with other important uses of the ocean.

Localized planning in advance of siting is critical to reduce and mitigate potential conflicts and environmental damage. Unfortunately, the current process being used for the siting of ocean wave energy facilities along the coast of the United States is Part I of the Federal Power Act, which is designed and intended for the siting of dams on rivers. That process does not require or even utilize the local advance planning necessary to reduce and mitigate conflict with other ocean uses.

Therefore, in addition to the reasons stated in the above referenced filing joined by Lincoln County, Lincoln County also asserts that the Federal Energy Regulatory Commission lacks jurisdiction to license ocean wave energy facilities under the Federal Power Act.¹

Respectfully dated and submitted electronically this 13th day of May, 2008.

Rob Bovett

Rob Bovett, OSB 91026
Assistant County Counsel
Lincoln County, Oregon
rbovett@co.lincoln.or.us
541-265-4018 (office)
541-265-4176 (fax)
541-351-1033 (cell)



¹ In 2003, the Commission asserted jurisdiction over ocean wave energy facilities sited in the territorial waters of the United States (from the shore to 12 nautical miles out to sea) pursuant to Part I the Federal Power Act (FPA). *AquaEnergy*, 102 FERC ¶ 61,242 (2003). The *AquaEnergy* case began when AquaEnergy (*nka* Finavera Renewables) filed a declaration regarding a proposed ocean wave energy project in Makah Bay, Washington (Makah Bay is on the Pacific Ocean at the Northern tip of the Olympic Peninsula). The National Oceanic & Atmospheric Administration (NOAA) of the United States Department of Commerce filed a motion to intervene on behalf of the National Marine Sanctuary Program (NMSP) and the National Marine Fisheries Service (NMFS). NOAA expressed concern about the proposed project under numerous federal acts, including the National Marine Sanctuaries Act and the Magnuson-Stevens Fishery Conservation Act. NOAA also indicated that “the proposed project is to be located within navigable waters and will be connected to the interstate grid which is part of, and in interstate commerce” and therefore “FERC has proper jurisdiction over the proposed project and should exercise that jurisdiction.” The Commission’s Director of Energy Projects agreed and issued an abbreviated order finding that the proposed project would be located in “a navigable waterway as defined by Section 3(8) of the Federal Power Act,” thus providing the Commission with jurisdiction. *AquaEnergy*, 101 FERC ¶ 62,009. In response, AquaEnergy filed an extensive request for rehearing in support of its position that the Commission’s Federal Power Act jurisdiction does not extend to ocean wave energy. In its ruling on the matter, the Commission noted that AquaEnergy had failed to provide legislative history to support its position that territorial waters off the United States coast were not navigable waters for purposes of Part I of the Federal Power Act. *AquaEnergy*, 102 FERC ¶ 61,242 (2003), at 5 ¶ 12 and note 5. The Commission concluded otherwise, and also concluded that an ocean wave energy conversion device is a “power house” for purposes of the Act. Lincoln County believes the Commission to be in error on both counts: (1) The legislative history that AquaEnergy did not provide would have informed the Commission that the precise purpose of the language relied upon for navigable water jurisdiction was added for the express limited intent of including shoals within that definition (*see* Kerwin, *Federal Water-Power Legislation* (1926), pages 203-204, 252-3, 256, 259); and (2) a “power house” is a term that refers to a specific component of a traditional hydroelectric project (*see* www.ferc.gov/students/whatisferc/history.htm, referring to en.wikipedia.org/wiki/Hydroelectric, which contains an illustrative graphic demonstrating this point). *See also* Protest of the United States Minerals Management Service (MMS) in *Newport OPT Wave Park*, FERC Project # P-12750 (February 16, 2007).