

UNITED STATES OF AMERICA 101 FERC ¶ 62,009
FEDERAL ENERGY REGULATORY COMMISSION

AquaEnergy Group, Ltd.

Docket No. DI02-3-000

ORDER RULING ON DECLARATION OF INTENTION
AND FINDING LICENSING REQUIRED

(Issued October 3, 2002)

1. On April 29, 2002, AquaEnergy Group, Ltd. (AquaEnergy) filed a Declaration of Intention (DI) concerning its proposed Makah Bay Ocean Wave Energy Pilot Power Plant (Makah Bay Pilot Project), to be located on Makah Bay, near Neah Bay, in Clallam County, Washington, at 48° 19' 53'' N, 124° 44' 18'' W. AquaEnergy asks whether licensing is required for the project under Part I of the Federal Power Act (FPA).

PROJECT DESCRIPTION

2. The proposed Makah Bay Pilot Project will consist of: (1) four energy-converting buoys; (2) a sealed power habitat on the floor of Makah Bay, containing a pelton turbine and generator with a maximum output of 1 MW; (3) a 2-mile-long transmission cable connecting to a land station containing an inverter and transformer; and (4) appurtenant facilities.

PUBLIC NOTICE

3. Notice of the DI was published May 15, 2002. Protests, comments, and petitions to intervene were to be filed on or before June 17, 2002. On June 17, 2002, joint comments and a motion to intervene were received from the Commerce Department's National Marine Sanctuary Program and National Marine Fisheries Service, stating that the proposed project requires a license because it would be located in navigable waters and connected to an interstate electricity grid.¹ Olympic Park Associates expresses

¹The filing adds that the proposed project would be located within the boundaries of the Olympic Coast National Marine Sanctuary. It states further that the proposed project will entail the alteration of the seabed, which is prohibited by the regulations

(continued...)

concern that AquaEnergy is at this point applying for only the initial phase of the pilot project, whereas, according to Associates, the full project will entail 75 energy-producing bouys anchored offshore, posing a threat to sea mammals, commercial fishing operations, and recreational boaters.

DISCUSSION

5. Pursuant to Section 23(b)(1) of the FPA, 16 U.S.C. § 817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it:

- is located on a navigable water of the United States;
- occupies lands of the United States;
- utilizes surplus water or water power from a government dam; or
- is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.

6. The Makah Bay Project will be located on Makah Bay, a navigable waterway as defined by Section 3(8) of the Federal Power Act.² The project will be located on a Commerce Clause waterway, entail post-1935 construction, and be connected to an interstate electrical grid.³ Accordingly, the project must be licensed.

The Director orders:

¹(...continued)
which govern the Sanctuary.

²16 U.S.C. § 796(7). “Navigable waters” means those parts of streams or other bodies of water which are used or suitable for use for the transportation of persons or property in interstate or foreign commerce.

³According to AquaEnergy's filing (at 1), the land portion of the power plant will be sited on land owned by the Makah Tribal Council. There is no indication that any federal lands are involved. The project will not use surplus water or waterpower from a Government dam.

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(A) Pursuant to Section 23(b)(1) of the Federal Power Act, the proposed Makah Bay Pilot Project is required to be licensed.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2002).

J. Mark Robinson
Director
Office of Energy Projects