

142 FERC ¶ 62,075  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Resolute Marine Energy, Inc.

Project No. 14438-000

ORDER ISSUING PRELIMINARY PERMIT  
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(January 30, 2013)

1. On July 25, 2012, Resolute Marine Energy, Inc. (Resolute or Applicant) filed an application for a preliminary permit under section 4(f) of the Federal Power Act (FPA),<sup>1</sup> to study the feasibility of the Yakutat Alaska Wave Energy Project No. 14438 (Yakutat Project or project). The proposed project would be located within a 25.26 square mile area within Alaska State submerged lands in the Gulf of Alaska, near the City and Borough of Yakutat, Alaska.

**I. Project Proposal**

2. The proposed project would consist of: (1) between 7 and 15 Surge Wave Energy Converters for a maximum total installed capacity of 750 kilowatts; (2) a single transmission line to bring project power to shore; (3) shore-based power conditioning equipment, transformers, and voltage regulations facilities; and (4) appurtenant facilities. The project would have an estimated annual generation of 3,942 megawatthours. There are no federal lands associated with the project; however, the project would be located within the waters of the State of Alaska.

**II. Background**

3. The Commission issued public notice of Resolute's permit application on November 15, 2012. Comments were filed by the U.S. Department of the Interior (Interior) and Atmocean, Inc. (Atmocean). No interventions were filed.

**III. Discussion**

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<sup>1</sup> 16 U.S.C. § 797(f) (2006).

### **A. Issues Related to Project Construction and Operation**

4. Interior noted that the project area provides habitat for fish and wildlife under its jurisdiction, including two avian species that have been designated as candidate species under the Endangered Species Act, and noted that the project area also provides various recreational opportunities. As such, Interior states that the projects design would need to take into consideration the fish, wildlife, and recreational resources of the project area.

5. Atmocean's comments provide information on hydrokinetic technologies and a discussion of near-shore versus offshore advantages/disadvantages.

6. A preliminary permit does not authorize a permittee to undertake construction of the proposed project. The purpose of a preliminary permit is to study the feasibility of the project, including studying potential impacts. The concerns raised in the comments are premature at the preliminary permit stage, in that they address the potential effects of constructing and operating the proposed project. Should the permittee file a license application, these issues would be addressed in the licensing process.

### **B. Consultation and Study Requirements Under the Permit**

7. Interior recommends the development of a detailed monitoring plan to evaluate pre- and post-construction and operational effects of the project on fish and wildlife and their habitats. In addition, Interior noted that Resolute should articulate the location of any land-based infrastructure to ensure appropriate studies of the area are completed.

8. The Commission has not sought to place all relevant study requirements in preliminary permits.<sup>2</sup> Rather, the studies to be undertaken by a permittee are shaped by the Commission's filing requirements for development applications. Potential development applicants are required to consult with appropriate state and federal resource agencies and affected Indian tribes, conduct all reasonable studies requested by the agencies, and solicit comments on the applications before they are filed.<sup>3</sup> Further, permit conditions have been framed to ensure that the permittee does not tie up a site without pursuing in good faith a study of the project's feasibility.<sup>4</sup>

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<sup>2</sup> See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

<sup>3</sup> See 18 C.F.R. § 4.38 (2012).

<sup>4</sup> See *City of Richmond, Va.*, 53 FERC ¶ 61,342 at 62,247 (1990).

#### IV. Permit Information

9. Section 4(f) of the FPA authorizes the Commission to issue preliminary permits for the purpose of enabling prospective applicants for a hydropower license to secure the data and perform the acts required by section 9 of the FPA,<sup>5</sup> which in turn sets forth the material that must accompany an application for license. The purpose of a preliminary permit is to preserve the right of the permit holder to have the first priority in applying for a license for the project that is being studied.<sup>6</sup> Because a permit is issued only to allow the permit holder to investigate the feasibility of a project while the permittee conducts investigations and secures necessary data to determine the feasibility of the proposed project and to prepare a license application, it grants no land-disturbing or other property rights.<sup>7</sup>

10. During the course of the permit, the Commission expects that the permittee will carry out pre-filing consultation and study development leading to the possible development of a license application. The pre-filing process begins with preparation of a Notice of Intent (NOI) and Pre-Application Document (PAD) pursuant to sections 5.5 and 5.6 of the Commission's regulations.<sup>8</sup> The permittee must use the Integrated Licensing Process unless the Commission grants a request to use an alternative process (Alternative or Traditional Licensing Process). Such a request must accompany the NOI and PAD and set forth specific information justifying the request.<sup>9</sup> Should the permittee file a development application, notice of the application will be published, and interested

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<sup>5</sup> 16 U.S.C. § 802 (2006).

<sup>6</sup> See, e.g., *Mt. Hope Waterpower Project LLP*, 116 FERC ¶ 61,232 at P 4 (2006) (“The purpose of a preliminary permit is to encourage hydroelectric development by affording its holder priority of application (i.e., guaranteed first-to-file status) with respect to the filing of development applications for the affected site.”).

<sup>7</sup> Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment. A permit holder can only enter lands it does not own with the permission of the landholder, and is required to obtain whatever environmental permits federal, state, and local authorities may require before conducting any studies. See, e.g., *Three Mile Falls Hydro, LLC*, 102 FERC ¶ 61,301 at P 6 (2003); see also *Town of Summersville, W.Va. v. FERC*, 780 F.2d 1034 (D.C. Cir. 1986) (discussing the nature of preliminary permits).

<sup>8</sup> 18 C.F.R. §§ 5.5 and 5.6 (2012).

<sup>9</sup> See 18 C.F.R. § 5.3 (2012).

persons and agencies will have an opportunity to intervene and to present their views concerning the project and the effects of its construction and operation.

11. This permit includes conditions to closely monitor the progress of the permittee's activities. In addition to the six-month progress reports required of the permittee, this permit also requires the permittee to file, within 45 days of the issuance date, a schedule of activities to be carried out under the permit and target dates for completion of these activities. At a minimum, this schedule shall include: (1) the filing of the NOI and PAD within one year of permit issuance, along with any request to use the traditional or alternative licensing process in lieu of the Integrated Licensing Process; or (2) the filing of an NOI and Draft License Application for a Pilot Project within two years of the permit issuance with a request for the necessary waivers to the Integrated Licensing Process to pursue hydrokinetic pilot project licensing procedures. If the periodic progress reports required by Article 4 of this permit are not timely filed, do not show significant progress, or if the permittee fails to timely comply with any of the other conditions of this permit for financial reasons or otherwise, the permit may be cancelled.

12. A preliminary permit is not transferable. The named permittee is the only party entitled to the priority of the application for license afforded by this preliminary permit. In order to invoke permit-based priority in any subsequent licensing competition, the named permittee must file an application for license as the sole applicant, thereby evidencing its intent to be the sole licensee and to hold all proprietary rights necessary to construct, operate, and maintain the proposed project. Should any other parties intend to hold during the term of any license issued any of these proprietary rights necessary for project purposes, they must be included as joint applicants in any application for license filed. In such an instance, where parties other than the permittee are added as joint applicants for license, the joint application will not be eligible for any permit-based priority.<sup>10</sup>

The Director orders:

(A) A preliminary permit is issued for the Yakutat Alaska Wave Energy Project No. 14438 to Resolute Marine Energy, Inc., for a period effective the first day of the month in which this permit is issued, and ending either 36 months from the effective date or on the date that a development application submitted by the permittee has been accepted for filing, whichever occurs first.

(B) Within 45 days of the issuance date of the permit, a schedule of activities proposed by the permittee during the three-year permit term, leading to the filing of a development application. At a minimum, this shall include filing, within one year of the

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<sup>10</sup> See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

date of issuance of this permit, a notice of intent to file a license application (NOI) and pre-application document (PAD), accompanied by, if desired, a request to use the Traditional Licensing Process or Alternative Licensing Process in lieu of the Integrated Licensing Process, or the filing of an NOI and Draft License Application for a Pilot Project no later than two years from the date of issuance of this permit with a request for the necessary waivers to the Integrated Licensing Process to pursue hydrokinetic pilot project licensing procedures. The PAD shall include a time frame for consulting with federal, state, and local agencies, tribes, non-governmental organizations, and any other interested entities; and for developing and filing a preliminary list of issues identified and studies related to these issues needed to develop a license application.

(C) This preliminary permit is subject to the terms and conditions of Part I of the Federal Power Act and related regulations. The permit is also subject to Articles 1 through 4, set forth in the attached standard form P-1.

(D) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days of the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2012).

Timothy J. Welch, Chief  
West Branch  
Division of Hydropower Licensing

**Form P-1 (Revised April 2011)****FEDERAL ENERGY REGULATORY COMMISSION****TERMS AND CONDITIONS OF  
PRELIMINARY PERMIT**

**Article 1.** The purpose of the permit is to maintain priority of application for a license during the term of the permit while the permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable application for license. In the course of whatever field studies the permittee undertakes, the permittee shall at all times exercise appropriate measures to prevent irreparable damage to the environment of the proposed project. This permit does not authorize the permittee to conduct any ground-disturbing activities or grant a right of entry onto any lands. The permittee must obtain any necessary authorizations and comply with any applicable laws and regulations to conduct any field studies.

**Article 2.** The permit is not transferable and may, after notice and opportunity for hearing, be canceled by order of the Commission upon failure of the permittee to prosecute diligently the activities for which a permit is issued, or for any other good cause shown.

**Article 3.** The priority granted under the permit shall be lost if the permit is canceled pursuant to Article 2 of this permit, or if the permittee fails, on or before the expiration date of the permit, to file with the Commission an application for license for the proposed project in conformity with the Commission's rules and regulations then in effect.

**Article 4.** No later than the last day of each six-month period from the effective date of this permit, the permittee shall file a progress report. Each progress report must describe, for that reporting period, the nature and timing of what the permittee has done under the pre-filing requirements of 18 C.F.R. sections 4.38 and 5.1-5.31 and other applicable regulations; and, where studies require access to and use of land not owned by the permittee, the status of the permittee's efforts to obtain permission to access and use the land. Progress reports may be filed electronically via the Internet, and the Commission strongly encourages e-filing. Instructions for e-filing are on the Commission's website at <http://www.ferc.gov/docs-filing/efiling.asp>. To paper-file instead, mail four copies of the progress report to the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

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