

132 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Green Wave Energy Solutions, LLC

Project Nos. 13052-001
13053-002

ORDER CANCELLING PRELIMINARY PERMITS

(Issued September 23, 2010)

1. On May 1, 2009, and May 7, 2009, the Office of Energy Projects issued preliminary permits to Green Wave Energy Solutions, LLC (Green Wave) to study the feasibility of, respectively, the proposed hydrokinetic Green Wave Mendocino Project No. 13053¹ and the proposed hydrokinetic San Luis Obispo Project No. 13052.² The Green Wave Mendocino Project would be located in the Pacific Ocean off the coast of Mendocino County, California; and the San Luis Obispo Project would be located in the Pacific Ocean off the coast of San Luis Obispo County, California. On June 21, 2010, Commission staff notified Green Wave of the probable cancellation of its preliminary permits for failure to timely file a notice of intent (NOI) to file a license application and a pre-application document (PAD) for each project. On July 23, 2010, Green Wave filed a request for an extension of time to file the NOIs and PADs. As described below, we deny the extension request and cancel the permits.

Background

2. The orders issuing the preliminary permits require the permit holder to file: (1) a schedule of activities leading to the filing of a development application; (2) semi-annual progress reports, and (3) within one year of permit issuance (i.e., by May 1 and 7, 2010, respectively), an NOI to file a license application and PAD.³ The permit orders explain that, under the Commission's "strict scrutiny" policy for hydrokinetic projects, the

¹ *Green Wave Energy Solutions, LLC*, 127 FERC ¶ 62,093 (2009).

² *Green Wave Energy Solutions, LLC*, 127 FERC ¶ 62,117 (2009).

³ The NOI and PAD are to be prepared pursuant to sections 5.5 and 5.6 of the Commission's regulations, 18 C.F.R. §§ 5.5, 5.6 (2010).

Commission will carefully scrutinize the semi-annual progress reports and, where sufficient progress has not been shown, will consider cancelling the permit.

3. Green Wave failed to file its first progress reports, which were due November 2, 2009.⁴ By letter of January 15, 2010, Commission staff notified Green Wave that its permits would be cancelled if the overdue progress reports were not filed within 30 days (by February 15, 2010). In response, Green Wave filed its progress reports on February 5, 2010.⁵

4. Green Wave did not file its second progress reports, which were due April 30, 2010, until May 18 (for Project No. 13053) and May 19, 2010 (for Project No. 13052).⁶

5. Green Wave's NOI and PAD for Project No. 13053 was due May 1, 2010; and the NOI and PAD for Project No. 13052 was due May 7, 2010. Green Wave did not file the NOIs and PADs. By letter of June 21, 2010, Commission staff notified Green Wave that its failure to timely file an NOI and PAD for each of the projects "warrants cancellation" of the preliminary permits, and gave 30 days notice pursuant to section 5 of the Federal Power Act (FPA)⁷ of the probable cancellation of the permits. In response, on July 23, 2010, Green Wave filed a request for an extension of time until the end of October 2010 to file the NOIs and PADs.

Discussion

6. Generally, deadlines may be extended for good cause.⁸ However, where, as here, a request for an extension of time is filed *after* the deadline has passed, the movant must show extraordinary circumstances sufficient to justify the failure to act in a timely manner.⁹ Green Wave has failed to show good cause, let alone extraordinary

⁴ Preliminary permits are effective the first day of the month in which they are issued, and progress reports are due every six months from the effective date of the permits.

⁵ The reports were virtually identical.

⁶ The reports were virtually identical.

⁷ 16 U.S.C. § 796 (2006) (permits may be cancelled after notice and opportunity for hearing).

⁸ 18 C.F.R. § 385.2008(a) (2010) (deadlines may be extended for good cause upon a motion made *before the expiration of the period prescribed* or previously extended).

⁹ 18 C.F.R. § 385.2008(b) (2010).

circumstances, sufficient to justify its extension request. Green Wave states that it is “diligently moving ahead with the NOI and PAD activities,” but describes the progress it has made in very general terms.¹⁰ In addition, it submits a revised schedule of activities that “reflects actual and projected slippage in the plan,” but gives no reason why it was unable to meet the one-year deadline and why additional time is needed.¹¹ Accordingly, we deny Green Wave’s request for an extension of the deadlines to file an NOI and PAD and cancel its preliminary permits for the Green Wave Mendocino Project No. 13053 and the San Luis Obispo Project No. 13052.¹²

The Commission orders:

(A) In order to allow all interested entities an opportunity to compete for development of the sites, the preliminary permits for the Green Wave Mendocino Project No. 13053 and the San Luis Obispo Project No. 13052 are cancelled effective Monday, October 25, 2010. No applications for the project sites may be filed until Tuesday, October 26, 2010.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission’s regulations, 18 C.F.R. § 385.713 (2010).

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ For example, it describes progress on various activities as “in work,” “near finalization,” “continuing,” or, in a few instances, “completed.”

¹¹ The revised schedule does not distinguish between the two proposed projects.

¹² Cancellation of Green Wave’s permits does not prevent Green Wave from continuing licensing and development activities, including filing license applications for the proposed projects.