

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Verdant Power LLC

Project No. 12178-002

ORDER ON CLARIFICATION AND DISMISSING
REQUEST FOR REHEARING

(Issued July 27, 2005)

1. Verdant Power LLC has filed a request for clarification or, in the alternative, rehearing of the Commission's April 14, 2005, Order concluding that, under specified circumstances, Verdant's temporary placement of hydroelectric generation facilities at a site in the East River near New York City, New York, does not require licensing under Part I of the Federal Power Act (FPA).¹ This order grants clarification and dismisses Verdant's alternative request for rehearing.

Background

2. On May 30, 2002, Verdant filed an application for a preliminary permit, pursuant to section 4(f) of the FPA,² to study the proposed Roosevelt Island Tidal Energy Hydropower Project. The proposed project would consist of an array of 494 21-kilowatt turbine generator units (a total of approximately 10 megawatts), installed on the bottom of the East River off Roosevelt Island, in Queens County, New York, as well as power control and interconnection facilities to be located on the island. On September 2, 2002, the Commission issued the requested permit.³

3. On February 2, 2005, Verdant filed a petition requesting "relief from the requirements of hydropower licensing under the Federal Power Act." Verdant stated that it wants to test, for an 18-month period, six of the underwater turbine units referenced in its preliminary permit application, to evaluate the potential impacts of the technology on

¹ *Verdant Power LLC*, 111 FERC ¶ 61,024.

² 16 U.S.C. § 797(f).

³ *See* 100 FERC ¶ 62,162.

fish, navigation, and other non-developmental resources, as well as to gain operational performance data. Power generated by the turbines would be delivered to two customers on Roosevelt Island.

4. On April 14, 2005, the Commission issued an order concluding that the installation and testing of the six turbines discussed by Verdant in its petition did not require licensing by the Commission, based on the following conclusions and conditions: (1) the technology in question is experimental, (2) the proposed facilities are to be utilized for a short period for the purpose of conducting studies necessary to prepare a license application, and (3) power generated from the test project will not be transmitted into, or displace power from, the national electric energy grid. We noted that Verdant failed the third part of the test, because it had proposed to provide power to two customers, thus displacing power from the grid, but stated that if Verdant does not transmit power into the grid or displace power from it, its test facilities will not require a license.⁴

5. On May 16, 2005, Verdant filed a request for clarification or, in the alternative, for rehearing.

Discussion

6. In its request for clarification, Verdant asserts that the induction generators it proposes to test must be connected to the grid in order to generate electricity by being excited by reactive power obtained from the grid. Verdant states that it is not possible for the technology it contemplates to generate power without displacing power from the grid.⁵ However, the company also states that it intends to provide the power to the end users at no charge, and that it proposes to provide compensation to Consolidated Edison of New York, Inc. and New York Power Authority (whose power would be displaced by the test power), such that there will be no net economic impact on these entities or on interstate commerce as a result of Verdant's tests.⁶ Verdant asks the Commission to clarify that this proposal is consistent with the April 14 Order. In the alternative, Verdant asks for rehearing of the order.

⁴ 111 FERC ¶ 61,024 at P 9.

⁵ Verdant request for rehearing at 3.

⁶ *Id.* at 5-6.

7. We will grant the requested clarification. In the April 14 Order, we discussed our precedent regarding the manner in which hydropower projects connected to the interstate electric power grid can, through displacement, affect interstate commerce, and stated that we are not prepared to hold that a project that would affect interstate commerce is not required to be licensed.⁷ Under Verdant's proposal as modified in its request for clarification, although electricity from the grid would physically be displaced by power produced from the test project, Verdant would make the entities that otherwise would have provided that power whole.⁸ Given those circumstances, Verdant's activities would effectively have no net impact on the grid or on interstate commerce. Therefore, Verdant may test its facilities, under the conditions set forth in the April 14 Order, as clarified in this order, without a license under Part I of the Federal Power Act.

8. Because we are granting Verdant's request for clarification, there is no need to address its alternative request for rehearing, which we will dismiss as moot.

The Commission orders:

(A) The request for clarification filed by Verdant Power LLC on May 16, 2005, is granted as discussed herein.

(B) The alternative request for rehearing filed by Verdant Power LLC on May 16, 2005, is dismissed as moot.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁷ 111 FERC ¶ 61,024 at P 9, n.4.

⁸ On June 9, 2005, Consolidated Edison filed a letter stating that it approves Verdant's proposal. See letter to J. Mark Robinson from Raymond Diaz.

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KELLY, Commissioner, *concurring*:

Today's order concludes that Verdant Power LLC (Verdant)'s temporary placement of hydroelectric generation facilities at a site in the East River near New York City does not require licensing under the Federal Power Act (FPA). While I agree with the decision to exempt Verdant from licensing, I reach that conclusion for a different reason.

Section 23(b) of the FPA requires licensing of facilities that are constructed, operated, or maintained for the purpose of "developing electric power." The Commission has created a three-part test to determine whether a proposed activity will require licensing under section 23(b). This test asks whether: (1) the technology in question is experimental; (2) the proposed facilities are to be utilized for a short period for the purpose of conducting studies necessary to prepare a license application; and (3) power generated from the test project will not be transmitted into, or displace power from, the national electric energy grid.

There is no question that Verdant's project meets parts one and two of the Commission's test. However, I disagree with the order's conclusion that Verdant meets part number three. While the order determines that power generated from Verdant's project will not be transmitted into, or displace power from, the national electric energy grid, Verdant itself states that its induction generators will be physically connected to the interstate grid and will displace power from the grid.

The order bases its finding that this project meets the third part of the Commission's test on the fact that there is no net economic impact on the interstate grid because Verdant will compensate parties whose power is displaced by the test power. While I agree that Verdant's proposal will have no net *economic* impact on users of the grid, this fact has little bearing on whether there is *physical* transmission into, or displacement from, the grid under the third part of the Commission's test. Transmission of electric energy and displacement of power are physical, not economic, attributes of an operation. Thus, I do not agree with the order's conclusion that Verdant meets the requirements of our test, nor do I agree that Verdant is not transmitting or displacing power.

Nevertheless, I do not believe that Verdant's facilities need to be licensed. The Commission's approach for determining in this case whether a party is "developing electric power" pursuant to FPA section 23(b) is not the only valid approach permissible under the statute. The following facts reveal that Verdant is not developing electric power within the meaning of FPA section 23(b). First, Verdant's project is experimental and the facilities are to be utilized for a short period of time for the purpose of conducting studies necessary to prepare a license application (parts one and two of the Commission's test). Second, the very nature of Verdant's project is one that requires a "jump start" from the grid in order to be tested. Verdant explains that "the technology involved in this demonstration requires the generators to be grid connected in order to generate electricity, and therefore the potential for displacement of grid power is a necessary consequence of the demonstration."⁹ Finally, Verdant will provide power to the end users at no charge and will compensate Consolidated Edison of New York and New York Power Authority for any power displaced by the test power.

Thus, I believe that the unique combination of facts presented by Verdant's proposal demonstrate that the activity will not amount to development of electric power under FPA section 23(b). It is well within the Commission's discretion to interpret the statute in this fashion, and I believe it is a more satisfying approach than trying to shoe-horn this case into a "test" that, while generally appropriate, just does not fit the facts at issue here. For these reasons, I respectfully concur with today's decision.

Sudeen G. Kelly

⁹ Verdant Motion for Expedited Clarification, or in the Alternative, Request for Rehearing at 9.