



Protecting the environment and working for a healthy community.

November 17, 2006

Ms. Magalie Salas
Federal Energy Regulatory Commission
888 First St., N.E., Room 1a
Washington, DC 20426

**Re: Pre-filing Process Review
Tidal Energy Projects - Long Island Sound
Docket No. P-12732
P-12738
P-12739**

Dear Ms. Salas,

Citizens Campaign for the Environment (CCE) is an 80,000-member, non-profit, non-partisan, advocacy organization working to protect public health and the natural environment in New York State and Connecticut. CCE works to build widespread citizen understanding and advocacy for policies and actions designed to manage and protect land and water resources, wildlife and public health.

CCE is very active in promoting policies and actions at the local, state, and federal level that support the development and use of renewable energy, which is derived from sources that are not depleted when used at sustainable levels. Today we face dwindling supplies of traditional energy sources; substantial increases in oil and gas prices, and significant pollutants that have an adverse impact on human health and the environment. Our nation must look towards alternative energy sources to meet our rising energy demand.

CCE, since its inception in 1985, has also been extremely active in working to protect water quality across New York State, Connecticut and throughout the Nation. Currently, CCE actively works on protecting many of New York's largest and often most impacted waterways including the Hudson River, the Long Island South Shore Estuary Reserve, the Great Lakes, the Finger Lakes, the Peconic River, and Long Island Sound. Additionally, CCE is an active member of the Long Island Sound Study Citizens Advisory Committee and the South Shore Estuary Reserve Citizens Advisory Committee.

CCE believes the development of all offshore renewable energy, including but not limited to offshore wind technology, wave technology, and under water current

technology, can be an important energy source for America. However, the development of these energies must undergo a site-specific rigorous environmental review process and they must not cause excessive harm to the waterway. The process must be comprehensive and include adequate public participation.

Currently there are 3 tidal energy proposals for Long Island Sound. The Long Island Sound Tidal Energy Project (P-12732), the Fishers Island Tidal Energy Project (P-12739), and the Orient Point Tidal Energy Project (P-12738). CCE offers the following specific comments in regards to these proposals:

1. Evaluate the effects of the turbines on finfish, shellfish, mammals, and diving birds before installation of large-scale projects.

Long Island Sound is an Estuary of National Significance, where salt water and fresh water are constantly mixing to create a unique “urban sea” environment. This delicate habitat supports a variety of fish and wildlife, including 125 species of birds. More than 56% of all protected species in New York, including sea turtles, rely on Long Island Sound’s habitat.

The three proposals are all located around an area referred to as “The Race”. The Race is the eastern entranceway into LIS. Its name comes from the “racing waters” and difficult navigational challenges. Despite these two factors the commercial and recreational fishing communities heavily use and rely upon the Race because of its prime fishing opportunities.

The projects are also located very close to Plum Island. Plum Island is home to 6,000 pairs of Common Tern and approximately 1,200 pairs of Roseate Tern, making the Island the second largest breeding population of these endangered species in North America.

In December of 2005 there was a pod of dolphins sited in LIS. The presence of dolphins in the Sound is not as rare as it use to be. One Charter Boat Captain is quoted, *“For the past few years, isolated sightings of mature dolphins, sometimes in the presence of younger ones, have occurred. But now, like in the early days, these large schools have re-emerged, most likely branching off to feed on schools of herring entering a much cleaner and unobstructed Sound.”*¹

In 2006, The Riverhead Foundation was awarded grant money from the LIS Futures Fund to conduct a survey of whales, dolphins, porpoises, sea turtles, sea lions and seals to confirm the value and use of the Long Island Sound to those species in order to guide conservation management. The survey area will be conducted in Plum, Fisher’s, Great and Little Gull Islands, Town of Smithtown, Town of Huntington, Town of Oyster Bay and Town of Southold. Presently four species of seals, four of the seven sea turtle species of the world, and 17 different cetacean species including common and Risso’s dolphins, harbor porpoises and pilot and humpback whales are found in the Long Island Sound. The results of this survey must be taken into consideration, since the main entrance for all of these species is the Race.

The three proposals for tidal energy all use underwater turbines to generate electricity. The effects on marine life from these underwater turbines have not been tested. As FERC is aware, **no project utilizing this underwater technology currently exists.** The East River project, which would have provided limited data at best, has not been installed.

¹ Morgan. *Anglers Surprised by Pods of Surfacing Dolphins*. Shore Publishing, LLC: 1 December 2005.

CCE has concerns that launching a large-scale energy project *before* data has been collected on potential/possible effects on marine life could prove to be detrimental to various marine species and to the health of Long Island Sound. Evaluating impacts post installation is unacceptable for these large scale projects.

2. Evaluate the possible effects of the underwater turbines on deep draft boats and submarines from the Groton Navy Base.

The Race, as previously stated, is an immensely used passageway of the Sound. It is the eastern entrance into the Sound and is used by commercial and recreational fishing vessels. It is also utilized as a pathway for many Regatta Races, commercial barge and tugboat operations, and for Navy Submarines. The potential of hundreds of submerged turbines needs to be evaluated in terms of marine vessel traffic safety and any potential restrictions. **The need for public and commercial access to the Race cannot be overstated.**

3. Evaluate the possible effects the underwater turbines would have on the Shellfish population, including Lobsters, Scallops, and Hard Shell Clams.

It is unclear in the three proposals how the turbines would be mounted to the seafloor and what mitigation measures would be used to ensure the lowest possible impact on the shellfish community. As stated above, there are currently no underwater turbines installed anywhere in the world. CCE has concerns on what data will be used to evaluate the possible effects on the shellfish population, since there is currently no data available. Data on the productivity of these areas as shellfish beds and harvesting areas needs to be gathered and assessed.

4. CCE opposes any “no-public access zone” or any “no fishing zone” surrounding the turbines or the entire turbine project.

Long Island Sound is held for the citizens of New York and Connecticut under the Public Trust Doctrine (PTD). The PTD is a law that has been handed down from justice system to justice system since Justinian times. Common uses for the public trust grow as times change; generally it has included fishing, navigation, commerce, shell fishing, swimming, boating, and general recreation purposes. However, it is important to note that all of these uses “must take into account the overarching principle of the public trust doctrine that trust lands belong to the public and are to be used to promote public rather than exclusively private purposes.”² “Because these goods are to be enjoyed by all, the government must assume a trust-like duty not to waste or expend them for the benefit of just a few.”³

It is unclear if the underwater turbines would require a no-public access zone or a no fishing zone. Would recreational and commercial boats be able to fish above the turbines? Would lobster pots still be allowed in that area of the Sound? These are extremely important questions that need to be addressed before any of the proposals

² *The Public Trust Doctrine* (California State Lands Commission).

³ Delgado, Trust Theory of Environmental Protection, and Some Dark Thoughts (www.bepress.com/ils/iss4/art4) summarizing Sax, the Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention, 68 MICH. L. REV. 478-89, 553-57

advance. The LIS is an active waterway that supports our economy and contributes to our way of life. Any energy proposal must be consistent with these uses of LIS.

CCE understands the importance of moving towards renewable, pollution-free energy production. We have participated in state-wide events focusing on harmful effects of Climate Change and what members of the public, government, and the private sector can do to curb the devastating effects that climate change can bring to our region, our country, and our world. However, we also believe that we must wisely choose the energy infrastructure we invest in based on sound scientific studies. **The need for energy should not over shadow the need to retain Long Island and Connecticut's maritime culture and the public use of Long Island Sound. CCE is concerned about the lack of data currently available on tidal energy and urges FERC to proceed slowly and thoroughly.**

Thank you for this opportunity to comment.

Sincerely,

Maureen Dolan Murphy
Program Coordinator

CC: Senator Charles Schumer
Senator Hillary Clinton
Senator Joe Lieberman
Senator Christopher Dodd
Congressman Tim Bishop
Congressman Steve Israel
Congressman Christopher Shays
Congresswoman Rosa DeLauro
Suffolk County Executive Steve Levy
Assemblyman Mark Alessi
Senator Kenneth LaValle