FERC Gives Corporations the Ocean –

FERC Chairman Joseph P. Kelliher, former corporate utility lobbyist and employee of the American Nuclear Energy Council

FERC Commissioner Philip D. Moeller headed the Washington, D.C., office of Alliant Energy Corporation and prior to Alliant Energy, worked in the Washington office of Calpine Corp.

by Frank Hartzell

From rivers in Alaska to California breakers to the open ocean off Maine and Florida, the Federal Energy Regulatory Commission (FERC) has taken water energy (hydrokinetic) development rights from the public and granted them to corporations. President George W. Bush's belief in empowering corporations to supplant the public process with "market-based" solutions is reflected in the five Commissioners he has appointed to FERC.

FERC legislation gives it authority over dams and interstate power lines. It has no power from Congress to regulate hydrokinetics. FERC, known for its cowboy self-image, stepped into a Pacific-sized void when a Canadian company proposed a wave farm on behalf of the Makah Bay Indian Nation in Washington State's Olympic National Marine Sanctuary. With no process in place, FERC issued its first hydrokinetics license to this project in December 2007, without getting any legislative authorization. Blaming FERC entirely for the confused process would be a little like blaming a single outlaw for the problems of the Old West. The President has taken no leadership on ocean issues, save for his 11th hour push for oil drilling. Democrats have no intelligible ocean platform. Congress is responsible for the void that FERC filled.

As hundreds of new limited-liability corporate applications for hydrokinetic permits began pouring in, FERC issued several "policies" purporting to establish procedures for hydrokinetics. Unknown to public agencies outside FERC, private companies had been working on a larger approach, which would openly benefit private companies while leaving the public process ill-defined. Bush appointees are proud to have insured that corporations have more power and regulators less authority. FERC has resisted nearly universal calls from federal, state and local agencies to engage in the usual public process. Instead, FERC adopted a neo-conservative notion that regulations are simply red tape. FERC wants to license corporations to put devices in the water, and then wait for the permits to clear before allowing generation to occur.

This idea was greeted by an unprecedented blast of condemnation not only by environmentalists but by a plethora of state and federal agencies such as the Department of Interior and National Oceanic Atmospheric Administration, who said FERC does not have basic understanding of the environmental consequences of the technology, much less the legal requirements of the other governmental jurisdictions involved.

In late 2007 and early 2008, private companies asked FERC for preliminary permits to launch tens of thousands of hydrokinetic devices. The largest number were not in the ocean, but in the Mississippi River. During June and July, much of the Missouri River has been claimed, along with a proposal to claim ocean currents off Maine.

By May 9, FERC had granted 106 permits for ocean, wave, and tidal projects and another 102 were pending many seeking to use thousands of devices. Thousands of square miles all over the nation have been quietly claimed, gaining corporations exclusive rights that can last for decades.

The entire business of dividing up the nation's waters for hydrokinetic energy testing and study has occurred almost entirely under the public radar. The Bush Administration has never announced its hydrokinetics strategy, nor have Democrats in Congress. FERC doesn't release the number of permits when asked, and doesn't notify any of the involved areas directly. Municipalities have been stunned to find out their waters have been claimed by private parties.

A Houston company claimed waters off both the Indian village of Eagle, and the City of Eagle, Alaska on a stretch of the Yukon River reachable by road only part of the year. This stunned the Eagle Village Chief and the city mayor, who had never heard of the successful applicant. Both communities were counting on a power project by the local power company. Because FERC's process non-competitively awards the first applicant in line exclusive study rights, the local company in Eagle, Alaska lost out

On the other hand, Lincoln County, Oregon and Sonoma County, California both asked for formal applicant status so they could lead the development of wave energy in their communities. In this case, FERC rejected their applications despite their rule of granting the license to the first applicant in line.

Local governments, surprised that their waters are being claimed under FERC permits for wave energy projects, have pleaded with the agency to slow down and communicate. FERC refused several appli-

Hydrokinetics

The Federal Energy Regulatory Commission (FERC) defines hydrokinetics as electrical power from flowing waters, not involving a traditional dam. Hydrokinetic preliminary permits, which legally resemble mining claims, give exclusive rights to study river and ocean currents as well as ocean waves and tides for three years. At the end of that time period, the permit holder automatically gets preference for a FERC conventional license for use of those waters to generate electricity from hydrokinetic power. Licenses can last up to 50 years. Hydrokinetics has the potential to provide 10 percent of the power needed by the United States. An Idaho study for the US Department of Energy has estimated hydrokinetics could even double the output of conventional dams.

Even the most ardent wave energy industry supporters say the technology is nowhere near ready, however. The best estimates are that wave energy today is where wind energy was 20 years ago.