Testimony of

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Committee on Energy and Natural Resources, United States Senate

Hearing on
S. 1419, the Marine and Hydrokinetic Renewable Energy Act

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Chairman Schatz, Ranking Member Lee, and Members of the Subcommittee:

My name is John Katz, Deputy Associate General Counsel for Energy Projects, Federal Energy Regulatory Commission. I appreciate the opportunity to appear before you to discuss S.1419, the Marine and Hydrokinetic Renewable Energy Act. As a member of the Commission's staff, the views I express in this testimony are my own, and not necessarily those of the Chairman or of any individual Commissioner.

I. Background

Pursuant to Part I of the Federal Power Act (FPA), the Federal Energy Regulatory Commission authorizes and regulates non-federal hydropower projects. FPA section 4(e) provides that the Commission may issue licenses for hydropower project works located across, along, from, or in any of the streams over which Congress has jurisdiction under its commerce clause authority, and on any part of the public lands and reservations of the United States. FPA section 23(b) makes it unlawful (with exceptions not relevant here) for any person, state, or municipality, for the purpose of developing electric power, to construct hydropower project works on the navigable waters of the United States, on non-navigable waters over which Congress has Commerce Clause jurisdiction, on public lands or reservations, or using surplus water or power from any government dam, except pursuant to a license issued by the Commission.

Under the FPA, the Commission regulates over 1,600 hydropower projects at over 2,500 dams. Together, these projects represent 54 gigawatts of hydropower capacity, more than half of all the hydropower in the United-States. Hydropower is an essential

part of the Nation's energy mix and offers the benefits of an emission-free, renewable, domestic energy source with public and private capacity together totaling about nine percent of the U.S. electric generation capacity.

During the last decade, there has been increasing interest in developing projects using new technology that produces electricity utilizing waves or the flow of water in ocean currents, tides, or inland waterways. These are referred to as marine and hydrokinetic projects. By early 2007, the Commission had received more than 50 applications for preliminary permits to study such projects, and had held a technical conference with respect to the development of these new technologies. The Commission then issued an interim policy statement with respect to its review of marine and hydrokinetic preliminary permit applications.

In 2008, Commission staff issued guidance on licensing marine and hydrokinetic pilot projects. The guidance discussed the issuance, under the Commission's existing authority and regulations, of five-year pilot licenses to enable developers to study and test new technology. Pilot project licenses would be for projects that were small, short-term, not located in environmentally sensitive areas, would be able to be shut down on short notice, and would be removed at the end of the pilot license term, unless a new license was granted at that time. Applicants would be required to consult with affected federal, state, and local resource agencies, Indian tribes, non-governmental agencies, and members of the public.

Since the issuance of the Commission policy statement and staff guidance, Commission staff has worked closely with project developers and other stakeholders to

explore the development of marine and hydrokinetic projects. There are currently 11 preliminary permits in effect for marine and hydrokinetic projects. To date, the Commission has licensed six marine and hydrokinetic projects, three of which were pilot projects, and is reviewing one application for a pilot tidal project.

II. S.1419

Section 102 of S.1419 provides that the Secretary of Energy, in consultation with the Secretary of the Interior, the Secretary of Commerce, and the Commission, shall carry out a program of research, development, demonstration, and commercial application to expand marine and hydrokinetic renewable energy production. While the Commission is not authorized or funded to engage in research, development, or commercial application activities, Commission staff is prepared to assist the Secretary, as appropriate, in these matters.

Section 103 of S.1419 provides for the development, under the Secretary of Energy, of national marine renewable energy research, development, and demonstration centers. Commission staff has discussed such centers with staff at the Department of Energy and believes that the centers could provide important support for the development of marine and hydrokinetic technology. Because the FPA requires that projects developed by private entities, states, and municipalities that are located in the navigable waters be licensed by the Commission, Commission staff believes that a regime in which the test centers would be owned by the Department of Energy would be preferable, so that testing would not require Commission authorization.

Section 201 of S.1419 would amend the FPA to authorize the Commission to issue pilot project licenses under specified criteria. As noted, the Commission has already issued pilot project licenses and Commission staff has developed guidance with respect to such licenses, under the assumption that the FPA currently provides authority for the Commission to do so. No entity has to date suggested that these actions are beyond the scope of the FPA. However, it is up to Congress to determine whether the Commission should be provided with explicit statutory authority in this area. To the extent that section 201 establishes criteria for qualifying pilot projects, Commission staff recommends that project developers and other stakeholders be given the opportunity to present their views on these matters. In addition, Commission staff recommends providing some flexibility in the criteria, given the unknowns in developing a new industry.

I would be pleased to answer any questions you may have.