

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

**FRIENDS OF MERRYMEETING BAY,** )  
**et al.,** )

**Plaintiffs** )

**v.** )

**No. 2:11-cv-38-GZS**

**NEXTERA ENERGY RESOURCES,** )  
**INC., et al.,** )

**Defendants** )

**FRIENDS OF MERRYMEETING BAY,** )  
**et al.,** )

**Plaintiffs** )

**v.** )

**No. 2:11-cv-37-GZS**

**TOPSHAM HYDRO PARTNERS** )  
**LIMITED PARTNERSHIP,** )

**Defendant** )

**FRIENDS OF MERRYMEETING BAY,** )  
**et al.,** )

**Plaintiffs** )

**v.** )

**No. 2:11-cv-36-GZS**

**MILLER HYDRO GROUP,** )

**Defendant** )

**FRIENDS OF MERRYMEETING BAY, )  
et al., )**

**Plaintiffs )**

**v. )**

**No. 2:11-cv-35-GZS**

**BROOKFIELD RENEWABLE POWER, )  
INC., et al., )**

**Defendants )**

**REPORT OF HEARING AND ORDER  
RE: SCHEDULING**

Held in Portland by telephone on February 24, 2012, at 4:00 p.m.

Presiding: John H. Rich III, United States Magistrate Judge

Appearances: For the Plaintiffs: Bruce Merrill, Esq.,  
David Nicholas, Esq.,  
Joshua Kratka, Esq.

For the NextEra Defendants: Amy Boyd, Esq.,  
Dorian Daggs, Esq.

For Defendants Topsham & Miller: Theodore Small, Esq.

For the Brookfield Defendants: George Dilworth, Esq.,  
Dow Carr, Esq.

The telephone conference was held in response to the motion of the NextEra defendants to amend the scheduling order in No. 2:11-cv-38-GZS (Docket No. 57), seeking extensions of deadlines agreed upon by the parties for serving expert reports or designations and for the Rule 30(b)(6) deposition of the NextEra defendants, as well as extensions of up to one month for existing deadlines

for discovery, service of notice of intent to file a motion for summary judgment, and filing of dispositive and *Daubert* motions. The motion was based on the fact that NextEra planned to release on February 29, 2012, certain draft portions of its Habitat Conservation Plan (“HCP”), which it had previously planned to release on February 1, 2012. The HCP is the prerequisite to the issuance of an Incidental Take Permit under the Endangered Species Act. In each of these related cases, the plaintiffs have demanded that the court order the defendants to apply for such permits, in addition to other relief sought by the plaintiffs.

After extensive discussion, I **RULED** as follows:

1. The request for three additional days in which the Miller, Topsham, and Brookfield defendants may serve their expert designations or reports, to March 2, 2012, is **GRANTED**. The NextEra defendants may also take those additional three days to serve their expert defendants’ reports or designations.

2. With respect to the HCP issue, the plaintiffs have by far the stronger argument. The delay that is the basis of NextEra’s request is of NextEra’s own making. Counsel for NextEra could not assure the court with confidence that the February 29, 2012, goal for release of the draft would be met. NextEra made the decision not to share the multiple existing drafts with its own experts.

Accordingly, by close of business on February 29, 2012, NextEra is **ORDERED** to provide to the plaintiffs with either the draft sections of the HCP that will be provided to its technical advisory committee, or, if that draft is not yet ready, any and all drafts of those sections of the HCP then in existence.

At this time, I will not extend the discovery deadline, nor will I make any order with respect to the Rule 30(b)(6) deposition of NextEra scheduled for February 29, 2012. Any future request for

extension of the discovery deadline will be considered in light of the efforts undertaken by the parties to schedule all depositions prior to the existing March 28, 2012, discovery deadline. My order extending the deadline for the defendants' expert reports or designations to March 2, 2012, means that those reports or designations are expected to address the HCP. The plaintiffs may supplement their expert designations or reports no later than March 16, 2012, to address the defendants' expert reports or designations to be served on March 2, 2012. Beyond that, I will be extremely reluctant to allow further supplementation of the expert reports or designations of any party in the future, and, if allowed, such supplementation shall be limited to reasons that occur after March 16, 2012, are not the result of the moving party's own actions or inaction, and demonstrate good cause.

Any dispute about the adequacy of any expert designation or report must be brought to the court's attention as soon as possible, after the parties have fulfilled their meet and confer obligations under Local Rule 26

**SO ORDERED.**

#### **CERTIFICATE**

- A. This report fairly reflects the actions taken at the hearing and shall be filed forthwith.
- B. In accordance with Federal Rule of Civil Procedure 72(a), a party may serve and file an objection to this order within fourteen (14) days after being served with a copy thereof. Failure to file a timely objection shall constitute a waiver of the right to review by the district court and to any further appeal of this order.

Dated this 27<sup>th</sup> day of February, 2012.

/s/ John H. Rich III  
John H. Rich III  
United States Magistrate Judge