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May 24, 2006

Matthew Scott, Chair
c/o Terry Hanson
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: Petition Regarding Water Quality Certifications – Androscoggin River Hydroelectric Power Projects

Dear Chairman Scott:

The purpose of this letter is to request that you, as Chair, summarily dismiss the petition to modify the water quality certifications for the hydroelectric power generating projects on the Androscoggin and Little Androscoggin rivers, filed by Ed Friedman by letter dated May 17, 2006.¹ The May 17 petition is, in effect, a petition for reconsideration of the Board's February 2, 2006 decision dismissing the prior petitions filed by Friends of Merrymeeting Bay ("FOMB") and Douglas H. Watts, and, as such, the May 17 petition must be dismissed because it was filed after the 30-day deadline in Chapter 2, Section 25 for petitions for reconsideration.

The following facts demonstrate that this is merely a petition for reconsideration of the Board's February 2 decision on the prior FOMB and Watts petitions:

1. The May 17 petition raises the same issue as the prior FOMB and Watts petitions -- whether the Board should modify the water quality certifications for the hydroelectric projects on the Androscoggin and Little Androscoggin rivers to require eel passage. Although the May 17 petition is limited to eels, the prior petitions also addressed eels. The fact that the Board's prior decision may not have addressed all the arguments raised by the May 17 petitioners in a way that was satisfactory to them is not a basis to call this a "new" petition.
2. The May 17 petition was submitted by the same principals as the prior FOMB and Watts petitions. The May 17 petition was filed by Ed Friedman, who filed the prior FOMB

¹ We represent FPL Energy Maine Hydro LLC, Hackett Mills Hydro Associates, Ridgewood Maine Hydro Partners, L.P., and Rumford Falls Hydro LLC. I am authorized to inform you that International Paper, the City of Lewiston, Miller Hydro Group, and Topsham Hydro Partners, L.P. join in this request.

petition as “Ed Friedman, Chair” of FOMB. The May 17 petition also lists FOMB and Douglas H. Watts as petitioners. It would make no sense to allow losing petitioners to avoid the reconsideration deadline merely by adding other petitioners to their “new” petition.

3. Nothing has changed since the prior FOMB and Watts petitions. It is specious to argue that the U.S. Supreme Court’s May 15 decision in the *S.D. Warren* case somehow changes the applicable law, because that decision merely affirmed the Maine Law Court’s February 15, 2005 decision, which had been decided when the Board dismissed the prior FOMB and Watts petitions on February 2, 2006.
4. The May 17 petition attaches and incorporates by reference the prior FOMB and Watts petitions.

Thus, the May 17 petition is a request for reconsideration, and, if it were allowed, it would be late. But Chapter 2 does not allow petitions for reconsideration at all in this situation; petitions for reconsideration are limited to Board decisions “approving or denying a license application.” See 38 M.R.S.A. § 341-D(5); Chapter 2, Section 25. Thus, the May 17 petition is a request for reconsideration in a situation in which no such request is permitted.

Further, even if a request for reconsideration were permitted in this situation, and even if the May 17 petition were timely, the Board does not have jurisdiction over it because of the pendency of the judicial appeal of the Board’s action on the prior petitions to modify. Mr. Watts has appealed that decision to court, and that appeal deprives the Board of jurisdiction over this matter. See *Gagne v. City of Lewiston*, 281 A.2d 579, 583 (Me. 1971) (“We hold that the appeal terminates the authority of the tribunal to modify its decisions unless the court remands the matter to the tribunal for its further action, thereby reviving its authority”). Even if it did not, it would be wasteful, and imprudent, to address this issue yet again while an appeal is pending in court.

In the event that you decide not to summarily dismiss the May 17 petition, we request the opportunity to file a more complete response to it.² Given that the Board has already acted on these issues and fulfilled its responsibilities with respect to them, and because the May 17 petition should be summarily dismissed, it is not appropriate at this time to file such a complete response. The fundamental point is that the May 17 petition is merely a re-hash of the prior

² In the meantime, we incorporate by reference the following filings that were filed in response to the prior FOMB and Watts petitions: (1) December 14, 2005 filing from Jeffrey A. Thaler on behalf of Topsham Hydro Partners, L.P., (2) January 9, 2006 filing from Sarah A. Verville on behalf of FPL Energy Maine Hydro LLC, (3) January 9, 2006 filing from Matthew D. Manahan on behalf of Hackett Mills Hydro Associates, (4) January 9, 2006 filing from Matthew D. Manahan on behalf of Ridgewood Maine Hydro, Inc., and (5) January 9, 2006 filing from David A. Jones on behalf of the City of Lewiston.

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petitions the Board dismissed in February, and you therefore should summarily dismiss it as an impermissible request for reconsideration of that prior decision.

Thank you for considering this letter.

Sincerely,



Matthew D. Manahan

cc: Cynthia S. Bertocci
Carol Blasi, Esq.
Dana P. Murch
Sean Mahoney, Esq.
Jeffrey A. Thaler, Esq.
David Swetnam-Burland, Esq.
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