

Jay Clement
Maine Project Office
US Army Corps of Engineers
675 Western Ave.
Augusta, ME 04351

May 9, 2010

Re: NAE-2008-03017, Maine Power Reliability Project

Jay,

Please accept on the record, the following comments from Friends of Merrymeeting Bay (FOMB) regarding Central Maine Power's (CMP) proposed Maine Power Reliability Project (MPRP) Army Corps of Engineer's (ACE) project number NAE-2008-03017.

FOMB is a membership organization of approximately 450 members living and working both in and out of the Merrymeeting Bay watershed. The Bay, at the junction of Kennebec, Androscoggin and four smaller rivers drains nearly 40% of Maine and is noted for its diadromous fish (some of which are endangered or species of concern) populations and their spawning and nursery habitat, rare emergent plants (some of which are globally rare), bald eagles and as the largest migratory waterfowl staging area north of Chesapeake Bay. Our mission is to preserve, protect and improve the unique ecosystems of the Bay and we do this through research, advocacy, education and land conservation.

Protection of water quality, aquatic species, wetlands and upland buffer habitats are priorities for us. Because of our watershed size, impacts on those areas seemingly far from the Bay are still of concern to us and have a direct bearing on the health of wildlife populations and water quality downstream. FOMB is an intervener in the MPRP proceeding and we are very concerned in reading the Settlement Stipulation, that the ultimate PUC decision is headed in a direction contrary to common sense, good science and a variety of laws including Section 404 of the Clean Water Act.

Even with a reduced transmission line length of 350 miles, the MPRP stands to fill something less than 385 acres of wetlands, damage about 1,000' of stream banks and temporarily impact another 100 acres of wetland. Unfortunately, the MPRP appears to do nothing to resolve energy, climate or national security issues.

Pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, before issuing permits for the discharges of dredged and fill materials at specified disposal sites, the Corps must insure that the proposed action complies with the strict mandate in its Guidelines: Section CFR 40 Part 230 §404(b)(1), § 230.10(a):

“No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”

In the current situation, there are plenty of non-transmission alternatives (NTA) to increase the projects stated goal of reliability. These include such things as demand response, distributed generation, efficiency measures, conservation, use of green renewables or hybrid solutions including these and other methods. MPRP is not a transmission project according to CMP, it is a reliability project. Reliability is categorically not a water dependant activity so the Corps must first determine if there exists the possibility of NTA's that are not water dependant.

Section 230.10(3) states when an activity does not require access to or siting within an aquatic area to "fulfill its basic purpose (i.e. is not water dependent), practicable alternatives that do not involve special aquatic sites are presumed to be available unless clearly demonstrated otherwise." The Corps cannot issue a §404 permit unless it can independently verify there exist no practicable alternatives. The burden is on the applicant to provide detailed, clear and convincing evidence *proving* that an alternative with less adverse impact is "impracticable" (40 C.F.R. §230.10(a)).

On Friday 5/7/10 we filed comments with the PUC in response to the proposed MPRP Settlement Stipulation. We oppose the Settlement and pointed out the huge contradiction or elephant on the table, if you will. It is clear from submitted evidence in the MPRP case many planning assumptions (needs assessments) on the part of the applicant are questionable, and also that ample NTA's exist. Built on a faulty premise, the MPRP "solution" is illogical. Yet, the PUC seems inclined to move ahead with this billion dollar project having potential for huge direct and indirect adverse effects on Maine. Our PUC comments are enclosed.

Excellent analyses and comments on legal, environmental and engineering aspects of this case have already been submitted to ACE by the Maine Chapter of the Sierra Club on March 15, 2010 and by Grid Solar LLC on February 9, 2010 and April 9, 2010. FOMB incorporates here by reference, the above comments inclusive of all Appendices and Exhibits.

For the reasons stated above and by reference, FOMB believes pursuant to 40 C.F.R. 230.10(a) the Corps must find the MPRP does not provide the least environmentally damaging alternative to possible power reliability issues and therefore the project must be ineligible for a §404 permit.

Thank you for your consideration. If you have any further questions, please feel free to contact me.

Sincerely,

Ed Friedman, Chair
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