

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

FRIENDS OF MERRYMEETING BAY AND	)	
ENVIRONMENT MAINE,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil Action No.
	)	2:11-cv-00036
	)	
MILLER HYDRO GROUP,	)	
	)	
Defendant	)	

**DEFENDANT MILLER HYDRO GROUP’S MOTION TO  
ENLARGE DISCOVERY AND RELATED DEADLINES,  
INCLUDING THE EXPECTED DATE OF TRIAL, BY  
THIRTY DAYS AND A REQUEST FOR CONFERENCE  
WITH THE COURT**

Defendant Miller Hydro Group (“Miller Hydro”), by and through its undersigned counsel, hereby moves the Court to enlarge the discovery deadline, and related deadlines, including the deadline by which the parties must be ready for trial, by thirty days. Because Miller Hydro’s expert deadline is rapidly approaching and could lapse before a decision is issued on this Motion, Miller Hydro requests an immediate conference with the Court to address its request to enlarge its expert deadline.

**Preliminary Statement**

This action is one of several that Plaintiffs have filed against owners of dams located on the Androscoggin and Kennebec rivers. The related actions include one filed against Topsham Hydro Partners Limited Partnership (“Topsham Hydro”) (D. Me. No. 2:11-cv-37-GZS); one filed against Brookfield Power US Asset Management, LLC, and Hydro Kennebec LLC (D. Me. No. 1:11-cv-35-GZS); and one filed against NextEra Energy Resources et al., (“NextEra”) (D. Me. No. 2:11-cv-38-GZS) (the “NextEra Action”) (together with this case, the “FOMB Dam Cases”).

Miller Hydro submits this Motion in response to a similar motion filed by NextEra in the

NextEra Action (“NextEra’s Motion”). For the reasons outlined in NextEra’s Motion, and the additional reasons outlined below, Miller Hydro consents to NextEra’s request to enlarge pre-trial deadlines, and seeks a similar extension of pre-trial deadlines in this matter.<sup>1</sup> In addition, Miller Hydro seeks to enlarge its deadline to designate experts to March 2, 2012, and to extend expected date for trial to August 2, 2012.

**Argument**

Miller Hydro requests that the Court set the following pre-trial deadlines and expected date for trial:

Defendant to designate experts:	March 2, 2012
Discovery and Local Rule 44 deadline:	April 27, 2012
Plaintiffs to make settlement demand:	March 14, 2012
Defendant to respond in writing to settlement demand:	March 28, 2012
Filing of notice of intent to file Motion for Summary Judgment:	May 4, 2012
Filing of dispositive motions and <i>Daubert/Kumho</i> motions:	May 18, 2012
Expected date of trial:	August 2, 2012

Plaintiffs have consented to enlarging Miller Hydro’s deadline to designate experts to February 28, 2012. Due to vacation schedules, counsel needs a modest enlargement of three days in excess of that consented-to enlargement of time. Plaintiffs have otherwise objected to Miller Hydro’s request to enlarge deadlines. As discussed below, enlarging the remaining pre-trial deadlines as requested is necessary given the difficulties that have arisen in scheduling and

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<sup>1</sup> After NextEra filed its Motion, the Clerk contacted undersigned counsel and requested that Miller Hydro file a motion or brief in this action if it consented to NextEra’s proposed pre-trial schedule revisions so that the Court could issue an Order in this action upon reaching a decision on NextEra’s Motion. Miller Hydro assumes this meets the Rule 26(b) requirement that a prior judicial approval be obtained before the filing of any written discovery motion.

completing depositions within the current discovery deadline; enlarging the pre-trial deadlines necessitates corresponding extension of the expected date of trial.

**I. Miller Hydro's Deadline to Designate Experts Should be Enlarged to March 2, 2012**

The Court's Scheduling Order provided that Plaintiffs' deadline to designate experts was January 11, 2012. Plaintiffs requested, and Miller Hydro consented to, an enlargement of Plaintiffs' deadline to January 16, 2012. Plaintiffs agreed at that time that they would consent to a similar extension of time for Miller Hydro. A similar extension of time for Miller Hydro would extend Miller Hydro's expert designation deadline to February 21, 2012, which falls a day after Presidents Day and within Maine's winter "school vacation week." Counsel for Miller Hydro will be out of the office on previously-scheduled vacations for most of that week.

As noted, Plaintiffs have consented to enlarging Miller Hydro's expert deadline to February 28, 2012. However, this would give counsel only one, or at most, two, working days after returning from vacation to finalize work with experts. Given school vacation, and counsel's own vacation, it is not practical to suggest that counsel will be able to coordinate with Miller Hydro's experts during the week of February 20, 2012 in a manner sufficient to allow for expert reports to be completed by February 28, 2012. Miller Hydro is seeking only a very modest additional three days enlargement of time to permit counsel to accommodate vacation schedules and also permit counsel to complete work with Miller Hydro's experts.

**II. The Discovery Deadline in This Action Should Be Enlarged Consistent With the Schedule Proposed by NextEra**

**A. Completion of Export Reports in the NextEra Action Will Delay Miller Hydro's Ability to Depose Plaintiffs' Experts in This Action.**

In its Motion, NextEra seeks to enlarge pre-trial deadlines primarily due to the fact that completion of NextEra's preliminary draft Habitat Conservation Plan ("HCP") will cause a delay in the finalization of its expert reports. Plaintiffs have opposed NextEra's request to enlarge

defendants' expert designation deadlines in that matter. However, even Plaintiffs' Opposition to NextEra's Motion contemplates that, in the absence of the requested enlargement of time, NextEra's experts could supplement their expert opinions when the preliminary draft HCP is completed. (Plaintiffs' Opposition to NextEra's Motion at 3.) Plaintiffs, presumably, would want and would seek an opportunity to supplement their expert reports in the event NextEra's experts supplements theirs. As a result, there appears to be no question that completion of NextEra's HCP will cause some delay in finalization of expert reports in the NextEra Action.

This necessarily will delay Miller Hydro's ability to depose Plaintiffs' experts in this action. This is because Plaintiffs' experts in this case are also experts in all of the other FOMB Dam Cases. By Order dated February 9, 2012, this Court required that depositions of common witnesses in the FOMB Dam Cases – which will include Plaintiffs' experts – are to be consolidated. (February 9, 2012 Order at 2-3.) It would be impractical, inefficient, and a waste of resources to depose Plaintiffs' experts in consolidated depositions before those experts have completed their reports. If Plaintiffs intend to supplement their expert reports when NextEra's preliminary draft HCP is complete, the ability to schedule a consolidated deposition will be delayed accordingly. The proposed modest enlargement of the discovery deadline is necessary account for this delay.

**B. The Scheduling of Consolidated Depositions, and Other Depositions, Will Require an Enlargement of the Discovery Deadline.**

The Court's February 9, 2012 Order to consolidate depositions of common witnesses was, apparently, intended to create discovery efficiencies in all of the FOMB Dam Cases. Yet, achieving those efficiencies will require overcoming scheduling difficulties. Plaintiffs have designated three experts, all of whom are common witnesses in all FOMB Dam Cases. Defendants in each of the FOMB Dam Cases will want to depose each of Plaintiffs' experts. Thus, the parties in the FOMB Dam Cases will have to schedule at least three consolidated

depositions. Miller Hydro expects that each deposition of each of Plaintiffs' experts will take multiple days. Thus, the parties will need to block off multiple days for each deposition to avoid having Plaintiffs' experts travel to Maine (in one instance from Oregon), return home, and then have to return to Maine for a continued deposition.

To accomplish this, the parties will need to find blocks of dates on which three experts and four teams of attorneys (Plaintiffs' attorneys, plus the three teams of defense counsel) are available for depositions in Maine. This is all without regard to other depositions that will be conducted in each individual FOMB Dam Case.

This is no minor complication, as experience has already proved in this case. For example, Plaintiffs previously noticed Miller Hydro's 30(b)(6) deposition for February 22-23 2012. Miller Hydro's representative was not available on those dates. The parties have since been attempting to schedule Miller Hydro's 30(b)(6) deposition during the first two weeks of March, but have been unsuccessful due to scheduling conflicts.

In addition, Miller Hydro assumes Plaintiffs will seek to depose Miller Hydro's experts. If the first two weeks of March are unworkable due to scheduling conflicts, as appears to be the case, this would mean that the parties would have to schedule and conduct three consolidated depositions of Plaintiffs' experts, a 30(b)(6) deposition of Miller Hydro, depositions of Miller Hydro's experts, and any additional depositions Miller Hydro may wish to take of Plaintiffs within the final two weeks of March in order to meet the current discovery deadline.

Complicating matters further is the sheer volume of documents in this case. To date, Miller Hydro has produced approximately 17,399 pages of documents to Plaintiffs. Plaintiffs have produced approximately 44,370 pages of documents to Miller Hydro. One of Miller Hydro's consultants, HDR, was subpoenaed and produced approximately 18,546 pages of hard copy documents, and approximately 9,000 emails.

Miller Hydro received copies of HDR's production to Plaintiffs on February 8, 2012. Plaintiffs' original production to Miller Hydro had formatting issues, and was re-produced to Miller Hydro on February 13, 2012. Thus, Miller Hydro has to review a significant volume of documents it has only recently received in order to be properly prepare for depositions. Completing this task while simultaneously preparing to conduct or defend seven or more depositions (assuming Miller Hydro may designate two or more experts, and conducts at least one deposition of Plaintiffs) during the final two weeks of March (or even the whole month of March), is simple not feasible.

The requested enlargement of the discovery deadline is needed to permit sufficient time to conduct depositions in this matter; related pre-trial deadlines should similarly be enlarged as noted above.

**III. The Expected Date for Trial Should be Enlarged to August 2, 2012**

Should the Court agree that the discovery deadline, and related deadlines, be enlarged as proposed above, it will be necessary to similarly extend the date for trial. The current expected date for trial is July 2, 2012. Under the proposed schedule above, the parties would have until May 18, 2012 to file dispositive motions and any *Daubert/Kumho* motions. This would mean that the parties would still be briefing motions on the eve of trial. Plaintiffs, it seems, concede that this would be impractical. (Plaintiffs' Opposition to NextEra's Motion at 3-4.) Enlarging the trial date by just one month will eliminate any concerns over the timing of dispositive motions, and would provide the parties with sufficient time to prepare for trial.

**Conclusion**

For the reasons described above, Defendant Miller Hydro Group respectfully requests that the Court enlarge the pre-trial deadlines, and the expected date of trial as outlined above.

Dated: February 17, 2012

Respectfully submitted,

/s/ Theodore A. Small  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of February 2012, I electronically filed ***Defendant Miller Hydro Group's Motion to Enlarge Discovery*** with the Clerk of the Court using the CM/ECF system that will send notification of such filing(s) to the following:

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