STATE OF MAINE
SAGADAHOC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-07-6

ED FRIEDMAN,	)	
	)	MOTION TO DISMISS OF
Petitioner,	)	PARTIES-IN- INTEREST
	)	FPL ENERGY MAINE HYDRO LLC,
v.	)	HACKETT MILLS HYDRO
	)	ASSOCIATES, RIDGEWOOD
MAINE BOARD OF	)	MAINE HYDRO PARTNERS, L.P.,
ENVIRONMENTAL PROTECTION,	)	AND RUMFORD FALLS HYDRO LLC
	)	AND INCORPORATED
Respondent.	)	MEMORANDUM OF LAW
	)	

INTRODUCTION

Parties-in-Interest FPL Energy Maine Hydro LLC ("FPL Energy"), Hackett Mills Hydro Associates ("Hackett Mills"), Ridgewood Maine Hydro Partners, L.P. ("Ridgewood"), and Rumford Falls Hydro LLC ("Rumford Falls") move to dismiss this appeal, for the reasons contained in the BEP's Motion to Dismiss dated July 16, 2007, and the additional reasons contained in the Parties-in-Interest's Memorandum in Support of the BEP's Motion to Dismiss dated August 3, 2007.[1] Those documents are incorporated herein by reference. Parties-in-Interest are filing this separate motion because Petitioner has objected to the Parties-in-Interest's Memorandum in Support as "sandbagging." Petitioner's Memorandum in Opposition, at 1. Petitioner will have an additional 21 days to respond to this motion.

BACKGROUND

Maine law provides that the BEP "may modify in whole or in part any license" for certain statutorily defined reasons. 38 M.R.S.A. § 341-D(3). The Department of Environmental

[1] We are authorized to inform the Court that Parties-in-Interest Topsham Hydro Partners, L.P., Miller Hydro Group, and Verso Androscoggin LLC join in this Motion.

Protection's ("DEP's") rules, specifically 06-096 CMR Chapter 2, § 27, establish that "[a]ny person, including the Commissioner, may petition the [BEP] to revoke, modify or suspend a license." This rule further provides that the BEP must either dismiss such a request or hold a hearing on the petition.

On February 2, 2006, the BEP dismissed petitions filed by Friends of Merrymeeting Bay ("FOMB," of which Mr. Friedman is the chairperson) and Douglas Watts requesting modification of the water quality certifications ("WQCs") issued by the DEP, pursuant to Section 401 of the federal Clean Water Act (the "CWA"), 33 U.S.C. § 1341, for eleven hydropower dams located on the Androscoggin River ("Androscoggin I"). On February 7, 2006, the BEP sent a copy of its Androscoggin I decision to, among others, Mr. Watts and Mr. Friedman, as the representative of FOMB. Seven of the eleven dams are owned by Parties-in-Interest FPL Energy, Ridgewood, and Hackett Mills. The BEP's dismissal of Androscoggin I is attached as Exhibit C to the BEP's Motion to Dismiss.

Mr. Watts then filed a petition with the Maine Superior Court pursuant to M. R. Civ. P. 80C, seeking judicial review of the BEP's dismissal of the Androscoggin I petition.

On May 17, 2006, while Mr. Watts's appeal of the BEP's dismissal of Androscoggin I was pending in Superior Court, FOMB, Mr. Friedman, Mr. Watts, and other individuals petitioned the BEP to modify the WQCs for thirteen hydropower dams located on the Androscoggin River ("Androscoggin II"), including the eleven dams subject to the Androscoggin I petition. Eight of these 13 dams are owned by the Parties-in-Interest.[2] The Androscoggin II petition is attached as Exhibit D to the BEP's Motion to Dismiss.

[2] FPL Energy owns the Brunswick Hydro Project, Lewiston Falls Hydro Project, and Gulf Island-Deer Rips Project. Ridgewood owns the Lower Barker Mill Project, Upper Barker Mill Project, and Marcal Hydro Project. Hackett Mills owns the Hackett Mills Hydro Project. Rumford Falls Hydro owns the Rumford Falls Project.

The Androscoggin I and II petitions both alleged that the lack of conditions for fish passage for American eels in the WQCs for the dams subject to the petitions is a violation of Maine's water quality standards. Both petitions requested the BEP to schedule an adjudicatory hearing to consider whether to modify the WQCs to include eel passage requirements. The Androscoggin II petition incorporated by reference the Androscoggin I petition, the BEP's proceedings regarding the Androscoggin I petition, and the proceedings filed in Mr. Watts's Superior Court appeal of the BEP's dismissal of Androscoggin I. The Androscoggin II petition listed Mr. Friedman and Mr. Watts as the contact persons for correspondence regarding the Androscoggin II petition. See Exhibit D of the BEP's Motion to Dismiss, at 32-33.

On December 6, 2006, the Superior Court dismissed the Androscoggin I appeal. The Court stated that:

> Because *any* person can petition the Board for a hearing, a hurdle was constructed to allow the Board to manage what could be numerous petitions for a public hearing. Thus, the Board screens and evaluates petitions by allowing petitioners and interested parties to appear before the Board to present evidence on whether a sufficient factual basis exists to warrant a more comprehensive public hearing on modifying, revoking or suspending a license. . . . [W]hile the Board is charged with evaluating the merits of each petition, it will necessarily deny most petitions, reserving public hearings for only those select petitions which raise enough evidence as to call into question the reasoning for granting the license.

Douglas H. Watts v. Maine Board of Environmental Protection, No. AP-06-19 (Me. Super. Ct., Ken. Cty., Dec. 6, 2006), at 4. The Superior Court's order in Androscoggin I is attached as Exhibit A to the BEP's Motion to Dismiss. Mr. Watts did not appeal the Superior Court's dismissal.

At its May 17, 2007 meeting, after presentations from Mr. Friedman and DEP staff, the BEP dismissed Androscoggin II. The BEP found that the Androscoggin II petition "raises the same issues and has substantially and materially the same factual basis as those petitions

dismissed by the Board little more than a year ago. Petitioners here do not allege that conditions have changed since the last petitions were filed and dismissed, nor do they present any other considerations that materially affect the issues as initially presented to the Board." The BEP's dismissal of Androscoggin II is attached as Exhibit B to the BEP's Motion to Dismiss.

On June 15, 2007, Mr. Friedman filed this petition, seeking judicial review of the BEP's dismissal of the Androscoggin II petition.

ARGUMENT

As set forth in the BEP's Motion to Dismiss and Parties-in-Interest's Memorandum in Support, (1) this Court lacks jurisdiction to hear Mr. Friedman's appeal, (2) Mr. Friedman lacks standing to file this appeal, (3) the doctrine of *res judicata* bars Mr. Friedman's appeal of the BEP's dismissal, and (4) the water quality certifications for these dams are no longer subject to modification.

I. This Court lacks jurisdiction to hear Mr. Friedman's appeal.

For the reasons stated in the BEP's Motion to Dismiss, this Court lacks jurisdiction to hear Mr. Friedman's appeal.

Mr. Friedman states that he has a statutory right to appeal pursuant to 38 M.R.S.A. § 346(1). Petitioner's Memorandum in Opposition, at 2, 4.[3] That section, however, notes that such appeals must be "in accordance" with the APA, which limits appeal to "final agency actions." 5 M.R.S.A. § 11001(1). The BEP action at issue in this appeal is not "final agency action" with respect to Mr. Friedman because it does not affect his legal rights, duties, or privileges – only those of the dam owners. 5 M.R.S.A. § 8001(4).

[3] The purpose for Section 346 is not to broaden the Superior Court's jurisdiction to non-final agency action, as argued by Mr. Friedman (Petitioner's Memorandum in Opposition, at 5), but to set forth a separate appeal method for emergency orders issued under 38 M.R.S.A. § 347-A(3).

The Parties-in-Interest are unaware of any legal rights, duties, or privileges held by Mr. Friedman that were affected by the BEP's decision. Nor does Mr. Friedman assert that any such right, duty, or privilege exists.[4] Mr. Friedman does not have a legal right to a hearing or a legal right to force the BEP to modify an existing license. The BEP possesses sole discretion whether to pursue modification, revocation, or suspension of a license. The statute at issue, 38 M.R.S.A. § 341-D(3), provides that "the board [*i.e.*, the BEP] *may* modify . . . any license, or *may* issue an order prescribing necessary corrective action, or *may* . . . revoke or suspend a license, whenever the board finds that [certain conditions are met.]" (Emphasis added.) This statutory language, upon which Mr. Friedman relies, establishes that the BEP's authority is discretionary.

The corresponding regulatory provision in no way imposes limitations on the BEP's discretion. Chapter 2, Section 27 of the DEP's rules simply elaborates on Section 341-D(3) by providing that "[a]ny person, including the Commissioner, may petition the [BEP] to revoke, modify or suspend a license," and requiring that the BEP, within 30 days of receiving such a request, must "dismiss the petition or schedule a hearing." 06-096 CMR Chapter 2, § 27. This rule neither entitles an individual such as Mr. Friedman to a hearing, nor creates a threshold evidentiary showing that if met by the petitioner obligates the BEP to hold a hearing. How the BEP proceeds after receiving a request pursuant to Chapter 2, Section 27 of the rules and 38 M.R.S.A. § 341-D(3), is left to the BEP's discretion.

Mr. Friedman's only "right, duty, or privilege" under this regulatory scheme, as established by the legislative and executive branches of government, is the right to submit a petition to the BEP requesting that the BEP modify an existing license. He has exercised this right without interference. The law entitles Mr. Friedman to nothing more. Thus, the BEP's

[4] The BEP's decision also did not affect the rights of the Parties-in-Interest because it did not result in modification of any of the certifications issued to Parties-in-Interest.

decision to dismiss Mr. Friedman's petition did not, and could not have, affected a legal right, duty, or privilege held by Mr. Friedman. Therefore, the BEP's decision is not a final agency action that can be the subject of a M.R.Civ. P. 80C appeal.

As the Respondent BEP notes in its Motion to Dismiss, the BEP's decision not to grant Mr. Friedman's request is akin to an agency or municipality opting not to exercise its prosecutorial discretion, rather than to a final agency action. Not only does the repeated use of the word "may" in 38 M.R.S.A. § 341-D(3) connote the discretionary nature of the BEP's authority to pursue license modification, but equally significant are the grounds upon which the BEP may amend, revoke, or suspend a license, such as: violation of a license condition, misrepresentation of facts in order to obtain a license, and failure of the licensee to comply with any law administered by the DEP. 38 M.R.S.A. § 341-D(3). Such grounds are prosecutorial in nature.

Both the U.S. Supreme Court and Maine Law Court have held that the exercise of prosecutorial discretion is not subject to judicial review. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (stating "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion"); *Fryeburg Water Co v. Town of Fryeburg*, 2006 ME 31, ¶ 19 n.6, 893 A.2d 618 (Me. 2006) ("The Ordinance cannot be read to mean, as SF contends, that a decision to not enforce the ordinance creates a right to appeal. The CEO is granted what is akin to prosecutorial discretion under the Ordinance"); *Harrle v. Town of Waterboro*, 2001 ME 1, ¶¶ 10-11, 763 A.2d 1159, 1161-62 (upholding the town's refusal to act on a request by a resident to initiate an enforcement action against a neighbor for a zoning violation, reasoning that courts lack jurisdiction to engage in appellate review of the exercise of prosecutorial discretion by municipalities). The BEP's

discretionary authority at issue in this case is no different. As such, this Court lacks jurisdiction to review the BEP's decision not to pursue modification of the WQCs, and Mr. Friedman's petition must be dismissed.

Mr. Friedman asserts, however, that the BEP action below is not akin to the exercise of enforcement discretion, because Mr. Friedman asked the Board to modify the certifications at issue, rather than revoke or suspend them.[5] Petitioner's Memorandum in Opposition, at 3. This distinction is irrelevant, because the statute at issue provides the Board with broad discretionary authority with a range of options to address a problem. The fact that the least severe option is permit modification does not render the Board's decision any less like an enforcement decision.[6]

Mr. Friedman next argues that 38 M.R.S.A. § 341-D cannot be akin to an enforcement statute because the licensee itself may petition for license modification pursuant to its terms. Petitioner's Memorandum in Opposition, at 4. This argument makes no sense. If the licensee wanted to amend its license, it would not use Section 341-D to argue, for example, that it has violated the conditions of its license (paragraph A) or that it has misrepresented the facts in its application (paragraph B). Rather, the licensee would simply take advantage of the license amendment procedures. 38 M.R.S.A. § 353(5); 06-096 CMR Chapter 2, § 21(B).

In short, this Court lack jurisdiction to hear this appeal.

II. Mr. Friedman lacks standing to file this appeal.

For the reasons stated in the BEP's Motion to Dismiss, Mr. Friedman lacks standing to appeal. The Parties-in-Interest are unable to conceive of any grounds on which Mr. Friedman

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[5] Mr. Friedman asserts that he did not ask the Board "to launch an investigation into whether the dam owners broke the law." In fact, that is exactly what Mr. Friedman did – he asked the Board to hold a hearing to investigate whether the dam owners operation of the dams at issue violates the law. Petitioner's Memorandum in Opposition, at 3.

[6] Mr. Friedman's citations to appeals of permit decisions and variances are inapposite. Petitioner's Memorandum in Opposition, at 3, 4. Such appeals and variance requests are not enforcement proceedings, but such appeals are in no way analogous to the BEP proceeding at issue here.

would have standing to appeal the BEP's decision. The Law Court has established that, "[t]o acquire standing to obtain judicial review of an administrative action, a person must demonstrate a particular injury therefrom. The agency's action must actually operate prejudicially and directly upon a party's property, pecuniary or personal rights." *Storer v. DEP*, 656 A.2d 1191, 1192 (Me. 1995) (internal citation omitted).

While undoubtedly Mr. Friedman was disappointed by the BEP's decision to deny his request that the BEP schedule a hearing to consider modification of the WQCs for the Androscoggin River dams, the effect of the BEP's decision was to allow the dams to continue to operate as presently licensed. Preservation of the *status quo* in no way altered Mr. Friedman's current relationship to the Androscoggin River or its tributaries. In the absence of any change Mr. Friedman has no claim that was "aggrieved" by the BEP's decision. *Great Hill Fill & Gravel, Inc. v. BEP*, 641 A.2d 184, 184-85 (Me. 1994) (noting that "[t]o have standing to challenge a final agency action, a litigant must demonstrate a particularized injury *as a result of the action*" and concluding that "[Petitioner's] legal rights and responsibilities were unchanged by the Board's decision. It cannot demonstrate any particularized injury. [Petitioner] had no standing to challenge the decision." (Emphasis added.)).

Further, preservation of the *status quo* in no way adversely affects a property, pecuniary, or personal right held by Mr. Friedman. Any interest held by Mr. Friedman is a right Mr. Friedman shares with all other members of the public, and not a "personal right" that if impinged upon would result in a "particularized injury" sufficient to give a person standing. The Law Court has clearly stated that a person must suffer a "particularized injury" in order to have standing. *See, e.g., Mitchell v. Judicial Ethics* Committee, 2000 ME 83, ¶ 4, 749 A.2d 1282, 1283; *Great Hill Fill & Gravel*, 641 A.2d at 184-85. In determining whether a person has

suffered a particularized injury "the central inquiry is whether the party seeking judicial relief has suffered an injury in fact distinct from the harm experienced by the public at large." *Ricci v. Superintendent, Bureau of Banking*, 486 A.2d 645, 647 (Me. 1984). To the extent the BEP decision challenged by Mr. Friedman has any impact at all on Mr. Friedman's rights, this impact is no different than the impact on other members of the public. As such, Mr. Friedman lacks standing.

III. The doctrine of *res judicata* bars Mr. Friedman's appeal of the BEP's dismissal.

The doctrine of *res judicata* applies when the same parties or their privies are involved in both actions, a valid final judgment was entered in the prior action, the matters presented for decision in the second action were or could have been litigated in the first action, and both cases involve the same cause of action. *Town of Ogunquit v. Cliff House & Motel,* 2000 ME 169, ¶ 10, 759 A. 2d 731 (2000); *Goumas v. State Tax Assessor,* 2000 ME 79, ¶ 5, 750 A. 2d 563 (2000). The Law Court also has applied the doctrine of *res judicata* to prior administrative proceedings, provided that such proceedings contain the essential elements of adjudication. *Town of Ogunquit v. Cliff House & Motel,* 2000 ME 169, ¶ 11; *Town of Freeport v. Greenlaw,* 602 A. 2d 1156, 1160 (Me. 1992). These elements are present in this case.

First, Mr. Friedman and FOMB are in privity with Mr. Watts, whose appeal of the BEP's Androscoggin I decision was dismissed by the Superior Court. The Law Court has stated that privity may be created when two or more persons have a mutual relationship, and has recognized that substance over form controls the inquiry into whether privity will be found. *Northeast Golf Club, Inc. v. Town of Mount Desert,* 618 A. 2d 225, 227 (Me. 1992).

Mr. Friedman and Mr. Watts have a mutual relationship in their requests to the BEP to modify the WQCs for the hydropower projects owned by the Parties-in-Interest. The

Androscoggin I petition filed by FOMB was signed by Mr. Friedman, as its chairperson. Both Mr. Friedman, as chairperson of FOMB, and Mr. Watts offered evidence and legal argument in support of the Androscoggin I petitions. See Exhibit C of BEP's Motion to Dismiss, at 24-30. Both Mr. Friedman and Mr. Watts also offered evidence and legal argument in support of the Androscoggin II petition. See Exhibit B of BEP's Motion to Dismiss, at 2. Mr. Friedman had actual knowledge of Mr. Watts's appeal of Androscoggin I and, in fact, the proceedings of Mr. Watts's appeal of the BEP's dismissal of Androscoggin I were incorporated into the Androscoggin II petition. Exhibit D of BEP's Motion to Dismiss, at 33. The commonality of interest between the two petitions and the two petitioners cannot be disputed.

Second, a valid final judgment was entered in the first proceeding, both by the BEP and by the Superior Court.

Third, the matters presented in the second proceeding were or could have been litigated in the first proceeding. Mr. Watts sought judicial review of the BEP's decision to dismiss his petition. Mr. Friedman seeks the same relief -- to overturn the BEP's dismissal of a petition to modify water quality certifications for 13 dams (11 of which were subject to the first proceeding).

Fourth, the causes of action are the same. Androscoggin I and II arise out of the same nucleus of operative facts and seek redress for the same perceived wrong. *Town of Ogunquit v. Cliff House & Motel,* 2000 ME 169, ¶ 12. As noted by the BEP, the Androscoggin II proceeding raises the same issues and has substantially and materially the same factual basis as the Androscoggin I proceeding. Exhibit B to the BEP's Motion to Dismiss at 2. Both petitions for judicial review argue the same thing -- that Maine's water quality standards are being violated

because the WQCs for dams on the Androscoggin River do not require specific passage measures for American eel.

Fifth, the essential elements of adjudication were present. In both proceedings, the petitioners appeared before the Board to present evidence and legal argument on whether a sufficient factual basis existed to warrant a more comprehensive public hearing. In this proceeding, as in the first proceeding, the BEP evaluated the merits of the petition and found that the petitioners had not offered sufficient evidence to call into question the reasoning for granting the WQCs.

In all material respects,[7] the Androscoggin I and II proceedings are identical – the same river, almost all of the same dams, the same legal basis, the same relief requested, and the same parties or their privies. Thus, the doctrine of *res judicata* bars this petition for judicial review.

Mr. Friedman asserts that *res judicata* does not apply because Justice Marden stated in his *Watts* decision that the petitioner there was free to repetition the BEP. Petitioner's Memorandum in Opposition, at 12. But the issue here is whether Justice Marden's decision bars Mr. Friedman from now taking a contrary position with respect to the ability to appeal BEP action under Section 341-D(3). The question of whether Mr. Friedman may re-petition the BEP (without an appeal right) is irrelevant to that question.

IV. The water quality certifications for the Androscoggin River dams are no longer subject to modification.

A WQC is required under Section 401 of the CWA before a federal agency may issue a permit for any activity that may result in any discharge into navigable waters. *See* 33 U.S.C. § 1341(a). The WQC must certify to the federal permitting agency that the activity will meet

[7] The minor differences noted by Mr. Friedman (Petitioner's Memorandum in Opposition, at 12) do not undermine the material similarity of the petitions.

state water quality standards; if the state denies certification, the federal agency may not issue a permit for the activity.

Under the Federal Power Act ("FPA"), Congress created a "broad federal role in the development and licensing of hydroelectric power." *American Rivers v. FERC*, 129 F.3d 99, 111 (2d Cir. 1997). The CWA, however, has diminished the reach of the FPA by "expressly requiring the Commission to incorporate into its licenses state-imposed water-quality conditions" under Section 401, including reopener provisions. *Id.*

Once a FERC license is issued, it generally may not be altered except upon "mutual agreement between the licensee and the Commission." 16 U.S.C. § 799. Thus, the water quality certification would need to include a specific reopener, incorporated into the FERC license (which the licensee has accepted), to allow a state to modify a certification and then for FERC to modify the FERC license.[8] *S.D. Warren v. Board of Environmental Protection*, 2005 ME 27, ¶¶ 23-26. Absent such a reopener, FERC may not incorporate the terms of a revised certification into a FERC license. *See, e.g., Public Utility District No. 1 of Pend Oreille County*, 112 FERC ¶ 61,055 (July 11, 2005), at 61,412 n.50 ("[b]ecause the original certification contains no reservation of authority for Washington Ecology to amend it in this manner, and the revisions were issued after the one-year deadline for state action, the Commission is not required to accept the revised certification").

In the certifications and FERC licenses at issue here there are no re-opener conditions for eel passage, and the BEP therefore has no authority to modify these WQCs as requested by Mr. Friedman. Thus, Mr. Friedman's petition fails to state a claim upon which relief can be granted.

[8] Mr. Friedman argues that 40 C.F.R. § 121.1(e) allows the BEP to modify a certification if it obtains the agreement of FERC. Petitioner's Memorandum in Opposition, at 8. But this provision applies only to certifications that have not yet been incorporated into a new FERC license, which FERC license, as noted above, may be modified only with the consent of the licensee.

This conclusion does not "gut" the modification, revocation, or suspension statute (Petitioner's Memorandum in Opposition, at 10), because (1) Section 341-D(3) applies to all DEP licenses, not just certifications, and (2), even with respect to certifications, certifications may be modified pursuant to Section 341-D(3) under certain circumstances before the certification is incorporated into the FERC license or even after the FERC license is issued if the certification contains an applicable reopener provision. Nor is this conclusion inconsistent with the Law Court's *S.D. Warren* decision, which simply upheld the validity of reopeners, and did not hold that reopeners are unnecessary. 2005 ME 27, ¶ 28.

CONCLUSION

As discussed in the BEP's Motion to Dismiss, this Court lacks jurisdiction to hear Mr. Friedman's appeal and Mr. Friedman has not demonstrated legal standing to bring the appeal. Further, because the BEP does not have authority to modify the WQCs at issue here, Mr. Friedman's appeal fails to state a claim upon which relief may be granted. Finally, this appeal is barred by the doctrine of *res judicata*. The Superior Court already has determined in a virtually identical proceeding that the BEP's decision to dismiss or schedule a hearing on a petition filed under 38 M.R.S.A. § 341-D(3) is a "wholly discretionary decision entrusted to the" BEP, which is not subject to judicial review.

For all of the foregoing reasons, FPL Energy, Hackett Mills, Ridgewood, and Rumford Falls Hydro respectfully request that the Court dismiss Mr. Friedman's petition.[9]

Dated at Portland, Maine, this 10th day of August 2007.

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NOTICE

In accordance with M. R. Civ. P. 7(b)(1), any matter in opposition to this motion must be filed no later than twenty-one (21) days after the filing of this motion. Failure to file timely opposition will be deemed a waiver of all objections to this motion, which may be granted without further notice or hearing.

[9] We are authorized to inform the Court that Parties-in-Interest Topsham Hydro Partners, L.P., Miller Hydro Group, and Verso Androscoggin LLC join in this requested relief.

STATE OF MAINE
SAGADAHOC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. AP-07-6

ED FRIEDMAN,	)
	)
Petitioner,	)
	)
v.	)
	)
MAINE BOARD OF ENVIRONMENTAL PROTECTION,	)
	)
Respondent.	)

NOTICE OF HEARING ON MOTION TO DISMISS OF PARTIES-IN-INTEREST FPL ENERGY MAINE HYDRO, LLC, HACKETT MILLS HYDRO ASSOCIATES, RIDGEWOOD MAINE HYDRO PARTNERS, L.P, AND RUMFORD FALLS HYDRO LLC.

Parties-in-Interest FPL Energy Maine Hydro LLC, Hackett Mills Hydro Associates, Ridgewood Maine Hydro Partners, L.P., and Rumford Falls Hydro LLC (collectively the "Parties-in-Interest") request the Clerk to schedule a hearing on the Parties-in-Interest's Motion to Dismiss the above-captioned appeal.

The matter to be heard is non-testimonial. To the nearest one-quarter hour, the Parties-in-Interest's good-faith estimate of the expected duration is 30 minutes, but it is likely that this hearing can be combined with the hearing on Respondent's Motion to Dismiss, in which case the total hearing time is likely to be closer to 45 minutes.

Dated: August 10, 2007

Respectfully submitted,

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v.	)
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MAINE BOARD OF ENVIRONMENTAL PROTECTION,	)
	)
Respondent.	)

ORDER

Upon consideration of the Motion to Dismiss of Parties-in-Interest FPL Energy Maine Hydro LLC, Hackett Mills Hydro Associates, Ridgewood Maine Hydro Partners, L.P., and Rumford Falls Hydro LLC, Parties-in-Interest's motion is GRANTED. Petitioner Ed Friedman's M.R. Civ. P. 80C petition is dismissed in its entirety.

DATED: _____

_____
Justice, Superior Court