

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission (FERC)
888 First Street, NE
Washington, DC 20426

FILED ELECTRONICALLY

RE: Motion for Rehearing of Commission Order Amending Eel Passage Operation at Benton Falls Project, FERC No. 5073, Sebasticook River, Maine.

March 19, 2010

Friends of the Kennebec Salmon, Friends of Merrymeeting Bay, Douglas H. Watts and Ed Friedman hereby file for re-hearing and amendment of the above Commission Order.

Sincerely,

Douglas H. Watts, president
Friends of the Kennebec Salmon
131 Cony Street
Augusta, ME 04330

Ed Friedman, chair
Friends of Merrymeeting Bay
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**United States of America
before the
Federal Energy Regulatory Commission**

Benton Falls Associates

Project No. 5073

**MOTION for RE-HEARING of COMMISSION ORDER
AMENDING DOWNSTREAM FISH PASSAGE OPERATION
at BENTON FALLS PROJECT, SEBASTICOOK RIVER, Maine.**

Friends of the Kennebec Salmon, Friends of Merrymeeting Bay, Douglas H. Watts and Ed Friedman file this motion for re-hearing of the Commission Order dated February 24, 2010 amending downstream fish passage operation plans at the Benton Falls Project, Sebasticook River, Benton, Maine (130 FERC ¶ 62,161).

This Commission Order amends the licensee's Sept. 2006 plan to install and operate protective screens at the intake of turbine unit 1 of the project from Sept. 1 to Nov. 30 annually to prevent the entrainment of downstream migrating fish, including the American eel, in the project turbines. This Order approves the licensee's installation

of protective screening over turbine unit 2 so it can be operated at night during the fall American eel migration season. Although the turbine screening at Unit #1 was first installed in response to the death of significant numbers of American eel in the project turbines, all downstream migrating fish require protection from these turbines and benefit from the screens, including anadromous Atlantic salmon.

Movants request the Commission amend this Order to require the protective screens at turbine units 1 and 2 be installed and operated year-round to protect downstream migrating anadromous Atlantic salmon which now inhabit the Sebasticook River above the Benton Falls project. Anadromous Atlantic salmon in the Sebasticook River are protected as an endangered species under the U.S. Endangered Species Act. In 2009, four adult anadromous Atlantic salmon were passed upstream at the Benton Falls project upstream fish passage facility.

I. Description of Parties.

Friends of the Kennebec Salmon is a volunteer organization founded in 1996 to protect and restore the native Atlantic salmon of the Kennebec River. The organization is based in Augusta, Maine and has been an active participant in Commission licensing and other regulatory proceedings at the Benton Falls Dam and other nearby dams in regards to the effects of these dams on the welfare of Atlantic salmon and other native fish species.

Douglas H. Watts is a resident of Augusta, Maine and a member of Friends of the Kennebec Salmon. He is an avid user of the Kennebec and Sebasticook Rivers and has demonstrated a long-term interest in the welfare of Atlantic salmon and other native fish species in these rivers and has been an active participant in Commission licensing and other regulatory proceedings at the Benton Falls Dam.

Friends of Merrymeeting Bay (“FOMB”) is a Maine non-profit corporation dedicated to protecting the ecological, aesthetic, historical, recreational and commercial values of Merrymeeting Bay (the “Bay”). FOMB works to preserve and protect ecosystems of the Bay through education, land conservation, research, advocacy, and membership events. The geographic area of concern for FOMB is the mid-coast Maine riverine delta and watershed consisting of the Kennebec, five other Maine rivers and their tributaries including the Sebasticook. FOMB has over 450 members who use and enjoy these rivers. FOMB members are concerned about the declining American eel and Atlantic salmon populations and have worked actively through educational, regulatory and legal means to halt threats to these and other diadromous species in the Merrymeeting Bay watershed. FOMB first contacted FERC on October 17, 2004 regarding eel kills on the Sebasticook at Benton Falls [RE: Ongoing Killing of Adult American Eels at the Benton Falls Project, Sebasticook River, Maine. FERC No. 5073. Ref. Original Docket # P-11472-017]. The group has also engaged in costly contaminant analyses of eels killed by Benton turbines.

FOMB member and Chairman Ed Friedman is a long-time Maine guide with a kayaking business along Merrymeeting Bay. He has conducted kayaking tours and instruction in Merrymeeting Bay and on the Kennebec River since the mid 1980s. He has also conducted tours by skiff and provided interpretive guiding services for various groups such as Maine Audubon and Mid-Coast Senior College on charter boats coming up the river. Services Mr. Friedman conducts on the Bay and rivers are a significant part of his business. The slaughter of eels and other migratory fish by dams adversely affects his livelihood, which is based in large part on a healthy population of native fish present in the unique system of the Bay.

II. Statement of Issues.

Protective fish screens at the Benton Falls Dam were installed several years ago, after the movants, state fisheries agencies, licensee and others documented large numbers of adult American eels killed and injured by the turbines of the dam.

Until 2009, anadromous Atlantic salmon did not have access to the Benton Falls dam because the Fort Halifax Dam, five and one half miles below, had no passage for Atlantic salmon. In the late summer of 2008, the Fort Halifax Dam was removed from the Sebasticook River. 2009 was the first year that Atlantic salmon had access to the Benton Falls Dam, which is equipped with an upstream fishlift and sorting facility.

In June 2009, anadromous Atlantic salmon in the Kennebec and Sebasticook Rivers were declared an endangered species under the U.S. Endangered Species Act by the Depts. of Interior and Commerce (74 FR 29344, 06/19/2009).

During the summer of 2009, Benton Falls project personnel and state fisheries agencies passed four adult anadromous Atlantic salmon at the Benton Falls fishlift and sorting facility. (*See*: Maine Atlantic Salmon Commission 2009 run count, at http://www.maine.gov/asc/research/trap_count_stats.shtml). These adult salmon were captured in the lift, examined, measured and released above the dam to spawn. These salmon will migrate back downstream past the Benton Falls dam to the Atlantic Ocean in the spring of 2010 as post-spawned kelts. Kelt migration typically occurs from April to early June.

The Benton Falls project licensees have not been issued an Incidental Take Permit by the Depts. of Interior and Commerce for the effects of their dam on the ESA-listed population of anadromous Atlantic salmon in the Sebasticook and Kennebec Rivers. Without such a permit, any injury or mortality of anadromous Atlantic due to operations of the dam is a take under the U.S. Endangered Species Act and is subject to enforcement action.

Past experience at the Benton Falls project shows the project turbines, when not fully screened, are lethal to large-bodied fish such as adult American eel and Atlantic salmon. Past experience shows the surface bypass weir installed at the dam for juvenile alosids is not sufficient, in and of itself, to prevent large-bodied fish from swimming through the turbines and being killed. This is the reason why the licensee in 2006 installed protective screening at the dam for adult American eel.

Without the protective screen in place the turbine intakes year-round, it is likely that the adult Atlantic salmon released above the dam in 2009 will enter the turbines this spring and be killed; and salmon passing the dam in 2010 and subsequent years will be killed as they attempt to migrate downstream.

If the protective screens now in place during the fall eel migration season are maintained year-round, the risk of down-migrating adult Atlantic salmon being killed in the turbines at Benton Falls will be eliminated, since the salmon will be physically unable to contact the turbines.

III. Need for Amendment.

Movants support the licensee's Plan to fully screen both turbines at the Benton Falls project to protect migrating fish from contact with the dam turbines. The one omission in the Commission Order and licensee's plan which Movants seek here to correct is that the protective screens at the Benton Falls turbines are only required to be installed and operated from Sept. 1 to Nov. 30 annually. Under the Order, the protective screens can be removed from Dec. 1 to August 31 annually, leaving the turbine intakes wide open. Atlantic salmon migrate upstream from April 1 to November annually to spawn. After spawning in late October and November, the adults migrate back downstream to the Atlantic Ocean as kelts from November to early June.

The Commission approved Sept. 1 to Nov. 30 operation schedule for the protective screens provides no protection to Atlantic salmon kelts during their downstream migration period to the Atlantic Ocean and allows them free access to the project turbines, where past experience with adult American eel shows they will be entrained and killed.

Year-round installation and operation of the protective screens will physically prevent any adult Atlantic salmon from contacting the project turbines and eliminate any chance they will be killed in them. This schedule will also protect post-spawned adult alewives, blueback herring and American shad which migrate above the dam in spring and early summer and migrate back downstream in June and July. Movants also here submit photographic evidence that some adult silver-phase American eels begin their downstream migration prior to Sept. 1. We include a photograph of a severely injured silver-phase American eel found in a back eddy of the Sebasticook River several miles below the Benton Falls Dam on August 20, 2008.

IV. Evidentiary Appendices.

Photographs of severely injured female American two miles below Benton Falls Dam, Sebasticook River, August 20, 2008. Eel was still breathing but could not move when it was found. Photo taken by Douglas Watts.

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