

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

FILED ELECTRONICALLY

RE: Petition for Commission Action to Protect Migrating Adult Atlantic salmon at the Benton Falls Hydroelectric Project, Sebasticook River, Benton, Maine. FERC Project No. 5073.

August 24, 2010

Dear Secretary Bose,

Pursuant to Commission Rule 207 (§385.207(a)(5)), on May 1, 2010 Friends of the Kennebec Salmon, Friends of Merrymeeting Bay, Douglas H. Watts and Ed Friedman petitioned the Commission to use its discretionary authority to require the turbine screens installed seasonally at the Benton Falls Project to protect American eels to remain in place year-round to protect migrating Atlantic salmon, as required by Section 9 of the U.S. Endangered Species Act.

Nearly four months have passed since we filed our May 1, 2010 petition. To date, the FERC docket shows that FERC has not acknowledged or responded to this petition.

By a ruling of the U.S. Court of Appeals in In Re: American Rivers and Idaho Rivers United, No. 03-1122, FERC has an affirmative duty under the APA to respond to our May 1, 2010 petition in a timely fashion, if only to reject our petition and allow us to seek a motion for rehearing, which if denied, allows us to take our claim to the U.S. Court of Appeals. The court stated at 9-10:

"FERC's insistence that it is not obligated to address a petition filed under one of its own regulations allowing requests for discretionary action, see 18 C.F.R. § 385.207(a)(5), is without merit. Under the APA a federal agency is obligated to "conclude a matter" presented to it "within a reasonable time," 5 U.S.C. § 555(b) and a reviewing court may "compel agency action unlawfully withheld or unreasonably delayed." Id. § 706(1); FERC may not wish to respond to the 1997 petition but any person aggrieved by a FERC action — including a failure to act — is entitled to judicial review under the Federal Power Act, see 16 U.S.C. § 8251(b). Indeed, the primary purpose of the writ in circumstances like these is to ensure that an agency does not thwart our jurisdiction by withholding a reviewable decision. FERC is obligated *under the APA* to respond to the 1997 petition. Moreover, these contentions go not to the reasonableness of FERC's delay but to the merits of the petition itself. We are not concerned here with what answer FERC might ultimately give the petitioners; rather, we are reviewing its failure to give them *any* answer for more than six years." (emphasis in original ruling)

Pursuant to the court's ruling in In Re: American Rivers and Idaho Rivers United, FERC has no authority to indefinitely "sit on" our properly filed Rule 207 petition from May 1, 2010 so as to

prevent us from seeking a motion for rehearing and thereby quashing our right to seek judicial review before the U.S. Court of Appeals.

For this reason we request FERC immediately issue an order which either approves or rejects our May 1, 2010 Rule 207 petition regarding safe passage for Atlantic salmon at the Benton Falls Dam, Sebasticook River, Maine.

Sincerely,

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

Ed Friedman, chair
Friends of Merrymeeting Bay
P.O. Box 233
Richmond, ME 04357

Douglas H. Watts, acting *pro se*.
Ed Friedman, acting *pro se*.