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October 21, 2008

*Via Electronic Mail and First-class Mail*

Ernest Hilton, Esq.  
Presiding Officer  
c/o Terry Hanson  
Board of Environmental Protection  
#17 State House Station  
Augusta, Maine 04333-0017

Re: *Quoddy Bay, LLC*, Applications L-23600-26-A-N, L-23600-TG-B-N,  
A-000975-71-A-N, W-9010-50-A-N, and 401 Water Quality Certification

Intervenors' Request that Quoddy Bay, LLC promptly file affidavit

Dear Mr. Hilton:

On October 17, 2008, on its own initiative, the Federal Energy Regulatory Commission (FERC) dismissed Quoddy Bay, LLC's applications for authorization to construct and operate an LNG import facility and associated pipeline and facilities. FERC had already suspended its review of Quoddy Bay's applications on April 28, 2008, pending receipt of information requested on October 11, 2007 necessary to FERC's preparation of a draft Environmental Impact Statement, its engineering review, and details of possible project revisions Quoddy Bay disclosed to FERC on February 29, 2008. FERC took this further step of dismissing the applications without prejudice because of Quoddy Bay's continued failure to provide FERC with this requisite information.

Quoddy Bay will have to file new applications to restart the FERC process if it chooses to go forward with any project. "This dismissal is without prejudice to Quoddy Bay filing a new application in the future *if Quoddy Bay is able to finalize its design and provide a complete application.*" Dismissal Order at 2 (Oct. 17, 2008) (emphasis added). A copy of FERC's Dismissal Order is attached.

FERC's dismissal of Quoddy Bay's applications raises several significant concerns including: the completeness of its applications pending before the BEP (design not final and insufficient information for environmental review), title right or interest (*e.g.*, Quoddy Bay's

lease to construct and operate is contingent on its diligent pursuit of permits, and FERC's issuance of EIS and license), its capacity to timely pursue the project, financial capacity, capacity to implement conditions that the Board may set, and efficient use of scarce state resources.

Equally important is that a stay should not serve as an indefinite place holder. An indefinite stay would continue the pall cast over other forms of regional development, including investment in the tourism and fishing industries. Indeed, Passamaquoddy Bay and its communities are not static, but dynamic. Further, LNG technology, needs, and impacts will invariably change over the next few years. In sum, Quoddy Bay's application will be stale, and in the meantime will stagnate other potential development.

Quoddy Bay's stated reason for its stay before the BEP was so that it may alter its design, change the project's environmental impact, and its negotiations with potential LNG suppliers. Letter, Brian Smith to Presiding Officer Ernest Hilton at 1-2 (July 28, 2008); *see also* Letter, Brian Smith to Presiding Officer Ernest Hilton at 1 (June 6, 2008) (antipating new filings associated with its applications). In reaction to FERC's Dismissal Order, Quoddy Bay's President, Don Smith, was quoted by the Bangor Daily News on October 18, 2008: "When we reapply we're not going to change the project . . . . It is going to be the same project, the same engineering, the same everything. We may have less air-quality impact if we don't have to build a power plant. So that does change the application in Maine slightly." Copy attached. Mr. Smith further stated that he expects the project to be operational in 2014 – six years from now. *Id.*

A stay is an extraordinary remedy rooted in a tribunal's equitable discretion:

A stay of proceedings . . . is not a matter of right but a matter of grace. . . . It will only be granted when the court is satisfied that justice will be thereby promoted.

\* \* \*

The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.

*Cutler Associates, Inc. v. Merrill Trust Co.*, 395 A.2d 453, 456-57 (Me., 1978) (citations omitted). Like a preliminary injunction, competing interests to be weighed in considering a stay include a balancing of equities and the public interest. *See Knutson v. Department of Secretary of State*, 954 A.2d 1054, 1063 (Me., 2008) *citing Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (elements for stay same as for preliminary injunction) and *Ingraham v. Univ. of Me. at Orono*, 441 A.2d 691, 693 (Me.1982) (citing elements for preliminary injunction as basis of

stay). Even though this matter has been stayed, not merely continued, BEP Rule 30(12) requires a showing of “reasonable cause” for a continuance.

Based on these developments at FERC and Quoddy Bay’s conflicting statements as to whether it is or is not altering its project design and application, we respectfully request that Quoddy Bay be required to immediately submit an affidavit detailing: (1) whether Quoddy Bay will seek dismissal of its Maine applications; (2) whether the project will or will not change, and if so, a summary of the magnitude of any changes; (3) Quoddy Bay’s current financial, technical, and environmental ability to pursue the project application, including any outstanding necessary studies and mitigation; (4) whether all parties to the Pleasant Point lease are fully complying with it, including timely payment(s), diligent pursuit of all required permits, and whether Quoddy Bay’s right under the lease to construct and operate its proposed LNG facility is contingent on (a) completion of an EIS by FERC (lead agency) and cooperating agencies, and (b) FERC’s issuance of a license for the operation of the Quoddy Bay LNG facility; and (5) Quoddy Bay’s timeline and its ability to meet the timeline.

This information will inform the Board and parties as to whether a continued stay is appropriate, or if Quoddy Bay’s Maine applications should be dismissed.

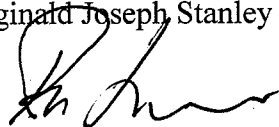
We further request two weeks to respond to Quoddy Bay’s affidavit by letter or motion, as appropriate.

Thank you for your prompt attention to this letter. Please let me know if you have questions.

Sincerely,

Save Passamaquoddy Bay – U.S., Inc.  
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cc: Ron Kreisman  
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Service list

Board of Environmental Protection Service List (08/13/08)  
Quoddy Bay LNG: Applications L-23600-26-A-N, L-23600-TG-B-N, A-000975-71-A-N  
W-9010-50-A-N and 401 Water Quality Certification

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I, Christina Nielsen, hereby certify that on October 21, 2008 I forwarded copies of Intervenor's *Request that Quoddy Bay, LLC Promptly File Affidavit* to the attached service list by first-class mail:

**Official Copy for Filings (by 4:00 p.m.) to Ernest Hilton c/o Terry Hanson**

Ernest Hilton, Presiding Officer  
c/o Terry Hanson  
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(1) Copy of all correspondence  
Pre-filed written *Testimony*:  
(1) Original & (8) copies for BEP mbrs.

**[BEP]**

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Board of Environmental Protection Service List (08/13/08)  
Quoddy Bay LNG: Applications L-23600-26-A-N, L-23600-TG-B-N, A-000975-71-A-N  
W-9010-50-A-N and 401 Water Quality Certification

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**[DEP Project Managers]**

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Dated at Burlington, Vermont, October 21, 2008.

by:

  
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Christina Nielsen