

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

FRIENDS OF MERRYMEETING)	
BAY, et al.,)	
)	
Plaintiffs,)	
)	No. 2:11-cv-38-GZS
v.)	
)	
NEXTERA ENERGY RESOURCES,)	
LLC, et al.,)	
Defendant)	

**ORDER AFFIRMING THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the Court on July 19, 2011 his Recommended Decision (Docket No. 31), which was amended on July 22, 2011 (Docket No. 34). Defendants filed their Objection to the Recommended Decision (Docket No. 35) on August 2, 2011. Plaintiffs filed their Partial Objection to the Amended Recommended Decision on Motion to Dismiss (Docket No. 36) on August 8, 2011. Plaintiffs filed their Response to Defendants' Objection to the Recommended Decision (Docket No. 37) on August 19, 2011. Defendants filed their Opposition to Plaintiffs' Partial Objection to the Amended Recommended Decision on Motion to Dismiss (Docket No. 38) on August 25, 2011.

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision.

To the extent that the Defendants' motions to dismiss sought a stay of this action as an alternative to dismissal, the Court's denial of the request for a stay is without prejudice to

Defendants renewing the request if they can provide documentation that the ESA administrative consultation process will result in final agency action by a date certain in the near future. Likewise, to the extent that the Court is dismissing Count II as to NextEra ER and NextEra EMOS, this dismissal is without prejudice to Plaintiffs' filing a timely motion to amend the complaint with more detailed allegations.

1. It is therefore **ORDERED** that the Amended Recommended Decision of the Magistrate Judge is hereby **AFFIRMED**.
2. It is **ORDERED** that the Motion of Defendants NextEra Energy Resources LLC and NextEra Energy Maine Operating Services LLC, and The Merimil Limited Partnership (Docket No. 13) to Dismiss or in the Alternative to Stay this Action is **GRANTED IN PART AND DENIED IN PART**. In accordance with this ruling, Count II of the Amended Complaint is hereby **DISMISSED WITHOUT PREJUDICE** as to NextEra Energy Resources LLC and NextEra Energy Maine Operating Services LLC.
3. It is **ORDERED** that the Motion of Defendant FPL Energy Maine Hydro, LLC (Docket No. 29) to Dismiss or in the Alternative to Stay this Action is **DENIED**.

/s/ George Z. Singal
United States District Judge

Dated this 9th day of September, 2011.

Plaintiff

**FRIENDS OF MERRYMEETING
BAY**

represented by **BRUCE M. MERRILL**
225 COMMERCIAL STREET
SUITE 501
PORTLAND, ME 04101
775-3333
Email: mainelaw@maine.rr.com
ATTORNEY TO BE NOTICED

CHARLES C. CALDART
NATIONAL ENVIRONMENTAL
LAW CENTER
1402 THIRD AVENUE

SUITE 715
SEATTLE, WA 98101
206-568-2853
Email: cccnelc@aol.com
ATTORNEY TO BE NOTICED

DAVID A. NICHOLAS
DAVID A. NICHOLAS, ESQ.
20 WHITNEY RD.
NEWTON, MA 02460
(617) 964-1548
Email: dnicolas@verizon.net
ATTORNEY TO BE NOTICED

JOSHUA R. KRATKA
NATIONAL ENVIRONMENTAL
LAW CENTER
44 WINTER STREET
BOSTON, MA 02108
(617) 747-4302
Email: josh.kratka@verizon.net
ATTORNEY TO BE NOTICED

Plaintiff

ENVIRONMENT MAINE

represented by **BRUCE M. MERRILL**
(See above for address)
ATTORNEY TO BE NOTICED

CHARLES C. CALDART
(See above for address)
ATTORNEY TO BE NOTICED

DAVID A. NICHOLAS
(See above for address)
ATTORNEY TO BE NOTICED

JOSHUA R. KRATKA
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

**NEXTERA ENERGY MAINE
OPERATING SERVICES LLC**

represented by **SCOTT C. MERRILL**
FOLEY HOAG LLP

155 SEAPORT BLVD
FLOOR 11, UNIT 1600
BOSTON, MA 02210-2600
617-832-1174
Email: smerrill@foleyhoag.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ADAM P. KAHN
FOLEY HOAG LLP
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2600
(617) 832-1000
Email: akahn@foleyhoag.com
ATTORNEY TO BE NOTICED

LEA TYHACH
FOLEY HOAG LLP
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2600
(617) 832-1000
Email: ltyhach@foleyhoag.com
ATTORNEY TO BE NOTICED

SETH D. JAFFE
FOLEY HOAG LLP
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2600
(617) 832-1000
Email: sjaffe@foleyhoag.com
ATTORNEY TO BE NOTICED

Defendant

**MERIMIL LIMITED
PARTNERSHIP**

represented by **SCOTT C. MERRILL**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ADAM P. KAHN
(See above for address)
ATTORNEY TO BE NOTICED

LEA TYHACH
(See above for address)
ATTORNEY TO BE NOTICED

SETH D. JAFFE
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

**FPL ENERGY MAINE HYDRO
LLC**

represented by **SETH D. JAFFE**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**NEXTERA ENERGY
RESOURCES LLC**

represented by **SCOTT C. MERRILL**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ADAM P. KAHN
(See above for address)
ATTORNEY TO BE NOTICED

LEA TYHACH
(See above for address)
ATTORNEY TO BE NOTICED

SETH D. JAFFE
(See above for address)
ATTORNEY TO BE NOTICED