

September 19, 2025

Sent Via Email Only to: laura.paye@maine.gov; Melanie.Loyzim@maine.gov

Hydropower Coordinator Laura Paye
Commissioner Melanie Loyzim
Department of Environmental Protection
17 State House Station
Augusta, ME 04333

**RE: Bucksport Generation LLC Reply to Certain Town Comments on
DEP Application #L-31353-36-B-N- Bucksport Mill, LLC**

Dear Coordinator Paye and Commissioner Loyzim:

Bucksport Generation LLC (“BucksGen”) timely provides the below response to one of the September 12, 2025 comments filed by the Towns of Orland, Surry, Penobscot and Blue Hill (“Four Towns Comments”) on the petition of Bucksport Mill LLC (“Mill”) for release from dam ownership or of water (“Mill Petition”) pending before the Maine Department of Environmental Protection (“Department”). In sum, the Mill provided 2023 notice of intent to sell the Fresh Water Supply System required by Section 16 of the Water Easement. The Mill did not update that notice when it shifted to abandonment of the dams and associated assets that constitute the Fresh Water Supply System. Nor did the Mill provide documentation that BucksGen’s rights in the Fresh Water Supply System would continue uninterrupted. Likewise, as discussed in BucksGen’s initial comments, the Mill did not otherwise delineate ongoing Water Easement obligations nor obtain BucksGen consent to changes in operation or ownership of the Fresh Water Supply System.

Specifically, the Four Towns Comments state that:

Under the Easement’s Exhibit C “Terms and Conditions Applicable to the Water Transmission Easement, Water Easement and Access Easement,” Section 15(a) provides, in relevant part, “. . . Grantor may not assign or otherwise convey to any other party . . . in any manner any of its rights and/or obligations in the Easement Areas or under the Easement without first offering to assign such rights and obligations to Grantor [sic]² in consideration of one dollar.”

The complication this Easement provision raises is the current suggestion on the record that Bucksport Mill has not made this first offer, or if it has, Bucksport Generation has certainly not yet exercised it nor said that it won’t exercise it.

[...]

When the petition was filed, apparently Bucksport Mill did not offer to assign to Bucksport Generation, or if it had, it had not received an answer, and nonetheless

purported to invoke a statutory consultation process for transfer of the dams. Bucksport Generation has been a party to this proceeding. Is it exercising its right of assignment under the Easement to take over Bucksport Mill's rights and obligations?

Regardless, any transferee of the dams – dams subject to the encumbrances of the Easement, which run with the land (Easement, Exhibit A, ¶ 4) – would have to secure a release or waiver from Bucksport Generation of this first right of assignment, in order to take clear title. While such a release or waiver might be implicit in a Title 38 transfer that happens under the auspices of the Department with Bucksport Generation an interested party to the Title 38 proceedings, legal standards would call for making Bucksport Generation's release or waiver of the right of first assignment explicit, in writing – and part of the title record.

Four Towns Comments at pages 3-4.

While BucksGen agrees that the Mill is obligated to consult in good faith with the Four Towns, BucksGen responds to this portion of the Four Towns Comments by providing the attached June 7, 2023 Mill notice to BucksGen ("Mill Notice") that:

Section 16(a) of Exhibit C requires Bucksport Mill to provide Bucksport Generation this written notice of such election to sell the Fresh Water Supply System. Upon your receipt of this notice Bucksport Generation has a 90-day period in which it has the option to purchase the Fresh Water Supply System for one dollar (\$1).

BucksGen did not exercise its option to purchase the Fresh Water Supply System.

The Mill Notice implemented Sections 15 and 16 of the Water Easement which establish a BucksGen right of first refusal for the Fresh Water Supply System. Specifically, the notice replicates the terms of Section 16(a) of the Water Easement. Despite notifying BucksGen pursuant to Section 16(a) of the Water Easement, the Mill did not provide documentation that the sale would comply with Section 16(d) of the Water Easement which specifies that:

Any sale of the Fresh Water Supply System, whether to Grantee [BucksGen] under this Section 16, to Whole Oceans or to a third party, shall be subject to documentation reasonable satisfactory to Grantee [BucksGen] that its rights and obligations with respect to the Fresh Water Supply System and this Easement will continue uninterrupted as set forth herein.

Thus, although the Mill did provide notice of its plan to sell the dams, the Mill Notice does not provide "documentation reasonably satisfactory to BucksGen" that BucksGen's rights and obligations with respect to the Fresh Water Supply System, which includes all three dams that are the subject of the Mill Petition, will continue uninterrupted should the Department proceed with any statutorily authorized action on the Mill Petition. Nor has the Mill provided such documentation in the years since the Mill Notice. Further, the Mill Notice did not seek, obtain, nor constitute BucksGen consent to the noticed sale of the Fresh Water Supply System under the

September 19, 2025

Page 3

Water Easement or otherwise. Consequently, as discussed in BucksGen's September 12, 2025 Comments, the Mill has not established administrative standing because the Mill does not have the authority to do the things that the Department would order it to do should the Department act on the Mill Petition—namely, transfer the dams and associated assets that comprise the Fresh Water Supply System to a new owner, or release water from the Fresh Water Supply System. BucksGen respectfully reiterates its request that the Department provide the Mill with an additional 180 days to resolve these issues.

Sincerely,



Joanna B. Tourangeau

cc: All Individuals Listed on August 20, 2025, email from Coordinator Paye (by email only)