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FERC  
Margalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

[eFiled with FERC on 2006 January 9]

**Re: Docket No. PF06-11-000**

Dear Ms. Salas,

William S. Scherman of Skadden, Arps, Slate, Meagher & Flom LLP, submitted a response to my eFiling of 2005 December 22, in which he asks FERC to deny my request to reject Quoddy Bay LLC's pre-filing request. Mr. Scherman brings up some issues that provide even more reason to reject Quoddy Bay LLC's pre-filing request.

Mr. Scherman questions my affiliation. The eFiling information is clear. "Save Passamaquoddy Bay" is a 3-nation alliance comprised of citizens of the USA, the Passamaquoddy Tribe, and Canada. My filing is quite clear as to the organization name.

Mr. Scherman brings up a business name — Old Sow Publishing — although it appears nowhere in my eFiling record. For FERC's edification, my business, Old Sow Publishing, is named for the tidal whirlpool that resides offshore between Deer Island, New Brunswick, Canada, and Eastport, Maine. Old Sow Whirlpool is the second largest whirlpool in the world, is the largest whirlpool in the Western Hemisphere, and is indicated as such in the preliminary navigation report that TRC conducted for Quoddy Bay LLC (see file "2\_QBLLCNavRpt2005Sep5.pdf").

Quoddy Bay LLC's own "Preliminary Navigations/Waterways Analysis and LNG Safety Review for LNG Receiving Terminal at Point Pleasant [sic], Maine" that was prepared for them by TRC, identifies Old Sow Whirlpool as significant enough a navigation hazard that TRC wrote, "Particular attention must be paid to 'Old Sow' whirlpool which requires the vessel to hug the U.S. shore along Eastport in the vicinity of Dog Island (US) and Deer Island Point (CAN)" (page 11). Hugging the shore requires the vessel to come into close proximity of several residences in the City of Eastport, as well as to other navigation hazards: Clark's Ledge and Dog Island.

TRC identifies Old Sow Whirlpool as a "Navigation Obstruction" in Table One, on page 16 of the preliminary navigation report.

On page 20 of TRC's report, TRC states, "There are no known physical hazards to navigation (wrecks, reefs, etc.) in this area, although the 'Old Sow' whirlpool, located in the channel between Dog Island, Maine and Deer Island Point, New Brunswick, presents a natural hazard requiring special care for transit. The 'Old Sow' is the second largest whirlpool in the world, and the largest in the Western Hemisphere."

Under "3.5. Points of Security Concerns," on page 23, TRC's report states, "The only choke point for this passage is the relatively narrow (1/2 nautical mile) passage between Dog Island, Maine and Deer Island Point, New Brunswick, which also is the location of the "Old Sow" Whirlpool."

Then, on page 32, the TRC report states, "Deer Island boasts the best onshore view of the world's second largest whirlpool, 'Old Sow', at the Deer Island Point Campground on the Southside of the island."

On another matter in Mr. Scherman's communication, he states that "no action has occurred" in the lawsuit filed by Nulankeyutmonen Nkihtaqmikon and six members of the Passamaquoddy Tribe against the Bureau of Indian Affairs (BIA) and the Department of the Interior (DOI) (together as "BIA/DIO") (see file "3\_LawsuitComplaint.doc"). FERC should

be alerted that no action has yet occurred because the BIA/DOI have not yet responded to the complaint.

Note that the plaintiffs have subsequently filed a second complaint (see file "4\_FOIA\_BIA\_Complaint.pdf") in the US District Court of Maine, one for Declaratory and Injunctive Relief under the Freedom of Information Act, (FOIA), 5 U.S.C. § 552, seeking the release of agency records that have been unlawfully withheld by the BIA/DOI.

Mr. Scherman asserts that my request is unfounded and premature. He argues that since no action has yet been taken on Nulankeyutmonen Nkihtaqmikon's court complaint against the BIA and DOI, there is no credibility to the accusation. In making such an argument, Mr. Scherman demonstrates surprising naivete regarding the long history of DOI/BIA trust responsibility failure. I recount just a few items from a current massive example of that failure by the DIO/BIA:

In the long-running (since 1996 June 9) class-action lawsuit, **Cobell v. Norton** [Civil Division, US Department of Justice, Cobell v. Norton, et al., Case No. 1:96CV01285 (D.D.C.)], the plaintiffs accuse the Interior Department of incompetence and fraud in its handling of Individual Indian Money Accounts. On 1999 December 21, the court ruled that the DOI was in breach of its trust duties, and that ruling was affirmed on 2001 February 23 by the US Court of Appeals for the District of Columbia Circuit.

On 2000 November 20, Special Master Alan Balarian declared that the DOI's conduct regarding email records bordered on being "contemptuous."

On 2001 Feb 21, Special Master Alan Balarian recommended additional contempt proceedings against the DOI Secretary, and several other DOI officials, due to evidence of retaliation against a BIA whistle-blower.

On 2001 February 23, the US Court of Appeals for the District of Columbia Circuit stated, "We find that the district court had before it ample evidence to support its finding of ongoing material breaches of appellants' fiduciary obligations." It also stated, "It is equally clear that the federal government has failed time and again to discharge its fiduciary duties."

On 2001 June 5, the Government Affairs Committee of the US Senate cited the DOI's malfeasance as one of Washington's "Ten Worst" examples of federal government mismanagement.

Additionally, a court order has kept the BIA's website and email offline since 2001, not only due to the Cobell lawsuit, but along with the court's discovery that the BIA's trust accounts could be easily accessed on the Internet by hackers.

**More recently**, on 2005 July 12, US District Court for the District of Columbia, Civil Action No. 96-1285 (RCL), ELOUISE PEPION COBELL, et al. v. GALE NORTON (See file "5-MemoreNoticetoClass.pdf"), the court stated, "The case is nearly a decade old, the docket sheet contains over 3000 entries, and the issues are such that the parties are engaged in perpetual, heated litigation on several fronts simultaneously. But when one strips away the convoluted statutes, the technical legal complexities, the elaborate collateral proceedings, and the layers upon layers of interrelated orders and opinions from this Court and the Court of Appeals, what remains is the raw, shocking, humiliating truth at the bottom: After all these years, our government still treats Native American Indians as if they were somehow less than deserving of the respect that should be afforded to everyone in a society where all people are supposed to be equal," and, "Despite Interior's near wholesale abdication of its trust duties, the vast majority of the Indian beneficiaries remain unaware that anything is out of order." Plus, "Interior's management of

the Indian trust has been a nightmare from the beginning,"  
...and on, and on.

The BIA/DOI have a demonstrable poor record of practices regarding their Indian Tribe trust responsibilities. In Nulankeyutmonen Nkihtaqmikon's complaint against the BIA/DOI, it is clear that the BIA/DOI waived their trust responsibilities of performing the required studies (environmental assessment, land appraisal to determine fair market value for a lease, and historic assessment) of the land specified in the lease agreement. Instead, the BIA passed those responsibilities to FERC, even though FERC has no statutory authority or obligation to satisfy the trust requirements charged to the BIA. This demonstrates a credible violation of trust responsibility on the part of the BIA/DOI in the case of the Ground Lease.

Since the BIA/DOI have not yet responded to Nulankeyutmonen Nkihtaqmikon's charges against them, as with the Cobell v. Norton case, there is indication that the court proceedings may go on for an extended period of time, which may then result in a judgment of injunctive relief for the plaintiffs and against Quoddy Bay LLC's interests in the site that they require for their project.

To preserve public resources and personnel time for use on projects that have followed good business practices and have secured clear access to the sites that they propose to use for LNG facilities, I again request that FERC reject Quoddy Bay LLC's pre-application filing until such time that the court makes a determination regarding the validity of the lease for Quoddy Bay LLC's proposed LNG receiving terminal site.

Very truly,

Robert Godfrey