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FOR IMMEDIATE RELEASE 7-21-20

Nuisance Lawsuit Filed Against Central Maine Power

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West Bath, Maine 7/21/20: Today in Maine Superior Court, Friends of Merrymeeting Bay (FOMB) filed a nuisance lawsuit against Central Maine Power (CMP) alleging the company's discretionary tower lighting and in-process radar facility at the Chops is harming and threatens to harm residents and wildlife in the unique natural area.

For 80 years towers stood at this power line crossing of the Kennebec River and were never lit to warn aircraft, even though air traffic in the area was higher in post WWII years than now. Neither were the lines themselves ever marked. In 2019, CMP replaced the towers and with no public notice or regulatory disclosure, the new towers were lit with three levels of strobing lights, white in the daytime and red at night. FOMB and other residents claim the lights destroy the Bay's previously dark sky and may adversely impact, birds, bats, insects and other important wildlife. Plaintiffs have no objection to the passive marking balls now installed on a wire between the towers.

“Unnecessary, poorly designed and misaimed light is responsible for about 80% of the US population being unable to see the Milky Way,” said Robert Burgess, President of Southern Maine Astronomers. “Besides affecting human health and necessary habitat for innumerable nocturnal animals, light pollution robs us of the night sky and our cultural heritage of wonder and awe at the universe surrounding us. The degradation of night sky is incremental; light by light, by light,” Burgess said. “Any unnecessary lighting contributes to the problem and, be it an over-lit convenience store or flashing strobes, denies us our common resource of dark skies, is unwelcomed and should be resisted.”

Tower lighting is not required by the FAA, only recommended. But in any case, given the distance of these towers from Wiscasset, the closest qualifying airport, they would need to be 400' high to be considered a defacto obstruction to air navigation. The new towers are well below that at 240'. Minimum safe altitudes for airplanes are 1,000' above and 2,000' horizontally from the highest structures. The towers are also marked on aeronautical charts.

“CMP's ten Chops tower lights flash 600 times per minute. They have destroyed Merrymeeting Bay's previously dark sky. Neither lights or in-process microwave transmitter are required by the FAA and given the nearly absolute lack of air traffic, both are needless” said Colleen Moore one of the co-plaintiffs. “They are a ‘solution’ looking for a problem that doesn't exist.”

After nearly a year of complaints, CMP is now working on an active aircraft detection lighting system using radar to irradiate an area of over 2,000 square miles with microwaves in order to detect approaching aircraft and only turn lights on when planes are within 3.5 miles of the towers. The system cost is estimated at \$500,000. In 2011, the World Health Organization classified this radiation as a possible human carcinogen and in 2018 the National Institutes of Health National Toxicology Program found whole body exposure to this low-level radiofrequency radiation (RFR) showed clear evidence of heart tumors, some evidence of brain and adrenal tumors and significant increases in DNA damage to the frontal cortex of the brain in RFR exposed male mice, the blood cells of female mice, and the hippocampus of male rats.

“Great efforts have been made to improve Merrymeeting Bay. Water quality has improved at great expense from industry and municipalities. Shoreline Zoning has kept development from intruding upon wildlife. Maine governmental agencies and local environmental groups have purchased and protected valuable shorelines, wetlands and islands as critical habitat. As one living on the shores of the Bay I must act as a steward and try to protect the gift I’ve been given. Considering CMP’s indifference and incompetence, I will fight them,” said Jotham Trafton of Topsham.

In 2001 Merrymeeting Bay was designated a Globally Important Bird Conservation Area by the American Bird Conservancy. The complaint cites various scientific studies detailing how both CMP’s Chops tower lighting and in-process microwave transmitter may be particularly egregious to the Bay’s vital bird, bat and insect populations.

FOMB has suggested quite a few zero-impact and low or no-cost alternatives to lighting and radar from just turning the lights off, to passive aircraft detection and or pilot controlled lighting but all have been rejected by CMP. For many including Representative Seth Berry, this leads to an inescapable conclusion:

“Follow the money,” said Berry, whose district has been especially hard-hit by CMP’s project. “Utilities in Maine receive an essentially guaranteed rate of return on equity of 10-14%, paid for through rate increases. The bigger the project and the more bells and whistles, the more they like it. This fiasco at Merrymeeting Bay is another glaring example of Mainers being hurt by CMP and being charged for it at the same time.” Berry is House Chair of the Maine Legislature’s Joint Standing Committee on Energy, Utilities, and Technology, and is sponsor of a bill to make Maine the second state (after Nebraska) to convert its power utilities to not-for-profit consumer ownership.

“Once again, CMP has seriously breached the public trust with this project, harmful to one of the world’s most unique natural resources” said Ed Friedman, FOMB Chair and a local helicopter pilot who has seen the tower lights at night from Oxford, 35 miles away. Friedman, who has worked on environmental issues for 50 years, believes “out of control expansion of low level radiation exposure from wireless proliferation including CMP’s aircraft detection radar system, is likely the most serious toxics threat of our time.” “Seventy-five years of science shows many adverse biological effects from electromagnetic radiation,” he said. “Balance possible if not likely harm to wildlife and thousands of people from CMP’s threatened microwave and current lighting exposures with what from the aviation safety standpoint, is entirely unnecessary and not required by the FAA and, you get discretionary abuse rising to the nuisance level and beyond.”

Friends of Merrymeeting Bay is represented by the Law Offices of Bruce M. Merrill and the Law Office of William Most. <https://www.mostlawoffice.com/>

Friends of Merrymeeting Bay is a non-profit organization dedicated to preserving through research, advocacy, land conservation and education the ecological, aesthetic, historical, recreational and commercial values of Maine's Merrymeeting Bay and its watershed, which includes the Kennebec and Androscoggin Rivers.

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