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BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

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ENVIR. APPEALS BOARD

In re: Dominion Energy Brayton )  
Point, LLC (formerly )  
USGen. New England, Inc. )  
Brayton Point Station )

**NPDES Permit No.: MA0003654**  
**Appeal No.: NPDES 07-01**

**STATE OF RHODE ISLAND'S  
MOTION TO EXPEDITE REVIEW**

Submitted By:

STATE OF RHODE ISLAND  
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Should the Environmental Appeals Board (“EAB”) grant Dominion Energy Brayton Point, LLC’s *Petition for Review of November 30, 2006 Determination on Remand Issued by Region 1 in Relation to NPDES Permit for Brayton Point Station* (“Dominion’s Petition for Review”), filed on or about January 3, 2007, the State of Rhode Island hereby moves the Environmental Appeals Board (“EAB”) to expedite its review thereof. In support of its motion, the State of Rhode Island argues that the now three and a half year-old National Pollutant Discharge Elimination (“NPDES”) Permit for Brayton Point Station (“BPS”) must be finalized if Mount Hope Bay is ever to have the chance of being restored to its historic vitality as a critical estuarine ecosystem within the Narragansett Bay watershed.

The forty-year-old Brayton Point Station (“BPS”) is currently operating pursuant to a NPDES permit for its cooling water intake/discharge that was issued in 1993. Two years later Mark Gibson of the Rhode Island Department of Environmental Management’s (“RIDEM’s”) Division of Marine Fisheries published his initial paper temporally correlating the collapse of the winter flounder fishery in Mount Hope Bay to the conversion of BPS’s Unit 4 generator to open cycle cooling in 1985. (*See “Comparison of Trends in the Finfish Assemblage of Mt. Hope Bay and Narragansett Bay in Relation to Operations at the New England Power Brayton Point Station,” June 1995, Revised June 1996 and August 1996*). Mr. Gibson’s study showed an 87% reduction in finfish abundance and an unprecedented loss of diversity of species following the modifications to BPS Unit 4. *See Gibson (August 1996) at 20*. The timing of Mr. Gibson’s report was intended, in part, to raise these issues for discussion well in advance of the scheduled 1998 renewal of BPS’s NPDES permit.

After seven years of studies and negotiations, Region 1 finally issued a new NPDES

Permit for BPS in 2003 requiring significant reductions in both water consumption and thermal discharge that will provide for significant improvements to the health, abundance and diversity of the fishery of Mount Hope Bay. However, three and one-half years later, BPS's 1998 permit-renewal remains mired in litigation – litigation that delays the implementation of long-needed improvements to the cooling system of this aging electric generating facility.

The State of Rhode Island's interest in this matter is well established. Although the BPS facility itself is in Massachusetts three-quarters of Mount Hope Bay lie in Rhode Island. Mount Hope Bay has historically been an important breeding ground for Rhode Island winter flounder due to its shallow waters and abundant freshwater input. Since the collapse of the Mount Hope Bay fishery in 1986, RIDEM has taken numerous measures to try and rebuild the stock both from a fishery management perspective and from an environmental perspective. However, winter flounder population numbers in Mount Hope Bay remain "flat-lined." Rhode Island is convinced, and the evidence supports the conviction, that so long as BPS's consumption of water and thermal discharges remain unchanged the plant will continue to kill eggs, larvae and juvenile fish with its water-intakes and raise water temperatures to inhospitable levels with heated water discharges in a manner that will prevent the devastated winter flounder population and the ecosystem from rebounding. Twelve years have elapsed since Mr. Gibson diagnosed the problem; eight years have passed since a new NPDES permit addressing these conditions should have been in place to halt the degradation of Mount Hope Bay; more than three years have passed since EPA Region 1 issued a permit designed to restore the ecosystem in Mount Hope Bay; finally, a year has passed since the EAB issued a decision that largely supports Region 1's permit while remanding the matter for clarification on several minor issues. Given the extended history of this matter, RIDEM respectfully requests

that the EAB expedite its consideration of Dominion's Petition for Review and the various responses in opposition thereto.

Respectfully submitted,

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Dated: March 5, 2007

## CERTIFICATE OF SERVICE

I hereby certify that a copy of *STATE OF RHODE ISLAND'S MOTION TO EXPEDITE REVIEW* was sent to each of the following persons by first-class mail on this 5th day of March, 2007.

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