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Admitted in NH, MD and select Federal Courts

November 7, 2014

HAND DELIVERED

Thomas S. Burack, Chair
New Hampshire Site Evaluation Committee
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095
ATTENTION: Jane Murray

**RE: NHSEC Docket No: 98-02 – AES Londonderry, LLC
Granite Ridge Energy, LLC Response to NHAGO Comment**

Dear Commissioner Burack:

On behalf of Granite Ridge Energy, LLC (“GRE”), we respectfully respond to the November 4, 2014 comments (“Comments”) submitted by the Attorney General’s Office (“NHAGO”) on GRE’s October 28, 2014 informational filing in the above docket (“GRE Filing”). Although the Comments do not request any particular relief, we ask the Committee to disregard them and to confirm that the Committee is not required to take any further action with regard to GRE’s proposed realignment of the cooling water line.

As a procedural matter, the Comments have been submitted outside of the scope of any authority that the NHAGO might have had as public counsel in the original certification proceeding. Under the statute, public counsel from the NHAGO serves only “until the decision to issue or deny a certificate is final.” *See* RSA 162-H:9, I. This means that public counsel’s role in the proceeding ended when the May 1999 certificate was issued to GRE’s predecessor. Furthermore, the statute does not authorize appointment of new public counsel unless “an application for a certificate has been filed with the committee.” *Id.* Because public counsel’s role concluded in 1999 and there is no pending application for a certificate, there is no legal basis for consideration of the Comments during the Committee’s review of GRE’s Filing. *See Petition of Chase Home for Children*, 926 A. 2d 287 (2007); *Appeal of PSNH*, 130 N.H. 285, 291 (1988) (agency’s authority is limited by statute). To the extent that NHAGO seeks to provide advice on the Committee’s authority, the Comments should have been directed to the Committee’s assigned legal counsel.

To the extent that the Comments raise delegation of authority and jurisdictional issues relating to the Certificate, they should have been raised through a timely Motion for Rehearing within thirty days after the Certificate was issued. *See* RSA 541. In particular, the Comments assert that the Committee's delegation of authority to DES was void and that "the statute does not provide for a general delegation of authority to realign either the energy facility itself or ancillary facilities or associated facilities such as those at issue in the recent Informational Filing." Comment, p. 2. The Comments also assert that "the statute and the order both delegate only minor alignment modifications" without "basic standards, impermissibly enabl[ing] the Department to determine its own jurisdiction." *Id.* Both issues could have been raised on reconsideration within statutory time frames after the Committee issued the May 25, 1999 Order. Therefore, the Comments should be rejected as untimely and outside of the Committee's jurisdiction to consider at this time.

Even assuming that the Committee has jurisdiction to review the delegation of authority contained in the Order and agrees that the delegation is void, the Committee can still confirm that no further Committee action is necessary for the realignment based upon its authority to "condition" the Certificate. *See* RSA 162-H:16, VI ("certificate of site and facility may contain such reasonable terms and conditions as the committee deems necessary"). The Committee reasonably required DES to review Town-requested cooling water line realignments after issuance of the Certificate. That DES was directed to "specify" as opposed to "approve" minor realignments shows that the Committee recognized DES' authority to review the path of the line in accordance with its environmental authorities. *See* Order (delegating DES authority "to specify ... alignment modifications requested by the Towns of Londonderry and Litchfield"). More importantly, however, the Committee had conditioned the Certificate upon Town approval of the exact location of the cooling water line. Significantly, the Committee never dictated the original route alignment, but, as pointed out in GRE's Filing, allowed the Town of Londonderry to determine the precise location of the cooling water line. *See* GRE Filing, p. 2; Order, Attachment G (Cooling Water Supply) ("the location of the line is acceptable to the Town [and] the precise location ... is subject to approval by the Town"). When read in conjunction with the delegation of authority to DES, it is clear that the Committee intended the Certificate to be conditioned upon DES exercise of its independent authorities over relevant environmental issues and for the Town to dictate the path of the line. The parties have accomplished this and the Committee should confirm the process, as any other approach would require protracted proceedings for projects that do not implicate the energy generation or transmission issues governed by RSA 162-H.

Finally, the Comments suggest that the proposed realignment is not "minor" and that there is a process for declaratory ruling that should be followed. *See* Comments, p. 2. The cooling water line is not an energy transmission pipeline and is only ancillary to the plant operations. There is no modification to the line other than minor relocation of less than a quarter of the line by roughly 300 feet to new Town rights of way. The realignment is necessary to accommodate development sought by the Town and GRE is attempting to accommodate the Town's request. There is certainly no need for the Committee to institute a formal declaratory ruling proceeding to address an issue that was contemplated when the Certificate was issued and

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addressed in the Order. GRE also is not requesting such a proceeding. In fact, doing so would complicate planned construction activities around Pettengill Road, as the cooling water line realignment is an integral aspect of the Town's development project. GRE is scheduled to begin construction before December 2014 and further delays would create undue burden and expense.

For these reasons, we respectfully request the Committee to acknowledge the GRE Filing and to confirm that no further action is required of the Committee before construction may commence.

Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Maureen D. Smith". The signature is written in dark ink and is positioned to the right of the typed name.

Maureen D. Smith

cc (via email):

Michael Iacopino, Esq.
Kevin Smith, Town Manager, Town of Londonderry
Jim Carlton, President and Chief Operating Officer, GRE
Eugene J. Forbes, P.E., Director, Water Division, NHDES
Craig Wright, Director, Air Division, NHDES
Todd Moore, NHDES
Ridgely Mauck, NHDES
Lori Sommer, NHDES
Alexis Rastorguyeff, P.E., NHDES
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