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March 26, 2009

Via HAND DELIVERY

Thomas S. Burack, Chairman
NH Site Evaluation Committee
c/o NH Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

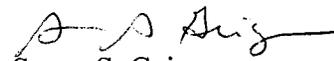
***Re: Docket No. 2008-04 - Application of Granite Reliable Power,
LLC for a Certificate of Site and Facility for the Granite Reliable
Power Wind Park in Coos County***

Dear Chairman Burack:

Enclosed for filing with the Site Evaluation Committee in the above-captioned matter please find an original and 9 copies of the "Applicant's Contested Motion to Strike Post-Hearing Submissions made by Intervenor Kathryn Keene and Public Counsel".

Thank you for your assistance and cooperation. Please let me know if you have any questions.

Sincerely,


Susan S. Geiger

Maureen D. Smith
(Of Counsel)

cc. Service List
Enclosure

546595_1.DOC

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2008-04

**RE: APPLICATION OF GRANITE RELIABLE POWER, LLC
FOR A CERTIFICATE OF SITE AND FACILITY
TO CONSTRUCT AND OPERATE
THE GRANITE RELIABLE POWER WINDPARK**

APPLICANT'S CONTESTED MOTION TO STRIKE

POST-HEARING SUBMISSIONS MADE BY

INTERVENOR KATHLYN KEENE AND PUBLIC COUNSEL

NOW COMES Granite Reliable Power, LLC (“GRP” or “the Applicant”), by and through its undersigned attorneys, and respectfully moves the New Hampshire Site Evaluation Committee Subcommittee (“Subcommittee”) to strike recent post-hearing submissions made by Intervenor Kathlyn Keene and Public Counsel, Senior Assistant Attorney General Peter Roth. In support of this Motion, the Applicant states as follows:

1. The adjudicative phase of the proceeding in the above-captioned matter concluded with oral arguments held the afternoon of March 19, 2009 in Lancaster, New Hampshire.
2. On Sunday, March 22, 2009, Intervenor Kathlyn Keene sent an electronic mail communication directly to the members of the Subcommittee and the parties with an attached document that she said “warranted being added to the record” in this docket. The document was a settlement agreement dated April 22, 2005 between Mr. Stephen

LaFrance, a witness in the above-captioned matter, and the New Hampshire Board of Licensure for Professional Engineers which resolved a complaint filed with said Board against Mr. LaFrance in 2004. The document was not accompanied by a motion for leave to file such document.

3. The above-referenced settlement agreement is totally irrelevant to the above-captioned matter involving GRP and therefore should be stricken from the record of this proceeding. *See* RSA 541-A: 33, II. (presiding officer may exclude irrelevant and immaterial evidence).

4. Assuming, *arguendo*, that the settlement agreement is somehow relevant to the instant action, the time period for introducing this document as evidence has long-since passed. In order for this document to be properly introduced as evidence in this proceeding, Mrs. Keene should have either marked the document as an exhibit at the final prehearing conference held on March 5, 2009 or sought to introduce it before the conclusion of the adjudicative phase of these proceedings.

5. Allowing the introduction of this information into the record at this juncture violates the Applicant's due process rights because there is no opportunity for the Applicant to respond to this information, or to cross examine a witness in connection with it.

6. Allowing the introduction of this information into the record at this time is also inappropriate and contrary to applicable rules and statutes. N.H. Admin. Rule Site 202.26 provides that the record closes at the conclusion of a hearing unless a party requests that the record remain open to accommodate the filing of evidence, exhibits, or arguments "not available at the hearing" and the presiding officer agrees that such

information is necessary to a full consideration of the issues raised at the hearing. At the conclusion of the parties' oral arguments on March 19, 2009, the presiding officer indicated that the record would remain open to receive additional filings. The Applicant understood these comments to mean that the record would remain open to receive public comment because, pursuant to RSA 162-H:10, III., such information may be received "subsequent to public hearings". Since Ms. Keene is a party to the instant action, her submission cannot be viewed as "public comment" within the meaning of the above-referenced statute. In view of the foregoing, her post-hearing submission must be stricken from the record.

7. On March 23, 2009, after the close of the adjudicative phase of the proceedings in this matter, Public Counsel proceeded in a fashion similar to Ms. Keene by sending an electronic mail communication, unaccompanied by a motion, directly to the members of the Subcommittee and the parties for their "consideration". Public Counsel's post-hearing submission suffers from the same maladies as Ms. Keene's submission: it is irrelevant, untimely and does not qualify as "public comment" because it was filed by a party to the adjudicative proceedings.

8. The document entitled "The State of the Birds, *United States of America*, 2009" attached to Public Counsel's electronic mail, and an excerpt from that document that appeared in Public Counsel's electronic mail message contain no specific information about the GRP project or its potential impacts on birds. Accordingly, that information should be stricken from the record. *See* RSA 541-A: 33, II. (presiding officer may exclude irrelevant and immaterial evidence).

9. On March 19, 2009, Public Counsel presented a witness to address avian issues. That witness also submitted prefiled testimony. Thus, Public Counsel had the opportunities to submit the document as an attachment to his witness's prefiled testimony, mark the document as an exhibit at the final prehearing conference held on March 5, 2009, or introduce it before the conclusion of the adjudicative phase of these proceedings on March 19th. Public Counsel's failure to take any of those steps bars him from introducing this document at this time. Moreover, because there is no witness to sponsor this document or to cross-examine, allowing it into the record at this juncture violates the Applicant's rights to due process and upsets the orderly conduct of these proceedings.

10. Allowing Public Counsel and other parties to the proceeding (who, as the Committee has previously noted, have different rights and responsibilities than members of the public), to continue to submit documents/exhibits for the Subcommittee's consideration after the conclusion of the adjudicative phase, will violate the Applicant's due process rights and ultimately undermine the integrity of the adjudicative proceeding. Principles of due process, administrative efficiency and the orderly conduct of these proceedings require that such post-hearing submissions be excluded from the record.

11. Pursuant to N.H. Admin. Rule Site 202.14 (d) and (e), on March 24, 2009, the undersigned contacted the parties to this proceeding by electronic mail in an effort to obtain concurrence with the relief sought herein. The following responses to the request for concurrence were received prior to the filing of the within motion: Ms. Lisa Linowes, on behalf of Industrial Wind Action Group, Counsel for the Public, Senior Assistant Attorney General Peter Roth and Intervenor Kathlyn Keene all indicated that that they do

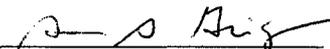
not concur with the motion. The remaining parties did not respond to the undersigned's electronic mail message prior to the filing of the within motion.

WHEREFORE, in view of the foregoing, the Applicant respectfully requests that this honorable Committee:

- A. Strike from the record of this proceeding the above-described post-hearing submissions;
- B. Order that the parties and Public Counsel be prohibited from making any such future submissions; and
- C. Order such further relief as it deems appropriate.

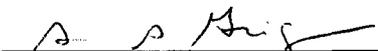
Respectfully submitted,
Granite Reliable Power, LLC
By and through its attorneys,
ORR & RENO, P.A.

Dated: March 26, 2009

By: 
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Certificate of Service

I hereby certify that on this 26th day of March, 2009, copies of the within Motion were sent by electronic mail or U.S. mail, postage prepaid to the Service List.


Susan S. Geiger