

April 28, 2009

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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

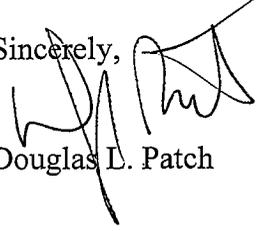
Re: Docket No. 2008-04 - Application of Granite Reliable Power, LLC for a Certificate of Site and Facility for the Granite Reliable Power Wind Park in Coos County

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 Objection To Motion Of Industrial Wind Action Group To Suspend SEC Deliberations And Reopen The Public Record.”**

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

Sincerely,


Douglas L. Patch

Maureen D. Smith
(Of Counsel)

cc. Service List
Enclosure

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 OBJECTION TO MOTION OF INDUSTRIAL WIND ACTION
GROUP TO SUSPEND SEC DELIBERATIONS AND
REOPEN THE PUBLIC RECORD**

NOW COMES Granite Reliable Power, LLC ("GRP" or "the Applicant") by and through its undersigned attorneys and objects to the Motion of Industrial Wind Action Group to Suspend SEC Deliberations and Reopen the Public Record ("the Motion") in the above-captioned matter dated April 27, 2009, by stating as follows:

1. In the Motion, the Industrial Wind Action Group ("IWAG") asks the New Hampshire Site Evaluation Committee Subcommittee in the above captioned matter ("the Subcommittee") to suspend its deliberations on the Application that is the subject of this proceeding, to take further actions to remove what IAWG characterizes as *ex parte* information from the deliberations, and that the record be reopened prior to continuing deliberations "to permit all parties an opportunity to participate should additional information be added to the record. IWAG also asserts that "[a]ll new information received by the Committee should be subject to cross-examination by the parties." IWAG Motion, pp. 3-4. In support of its Motion IWAG notes that the Subcommittee, during its deliberation session on April 20, 2009, made three requests for additional information: information from the Applicant related to the root

cause of the Altona incident; an update from the Applicant as to the status of the Federal Aviation Administration (“FAA”) filings; and a request that the Fish and Game Department provide an onsite assessment of mitigation lands identified in the High Elevation Mitigation Agreement. IWAG argues that the requests were made directly to the Applicant and Fish and Game, “with no opportunity for any of the other parties to participate in the communication.” IWAG Motion, Par. 2. IWAG cites Admin. Rule Site 202.26(a) in support of its argument that the only method by which additional information can be accepted is through reopening the record. IWAG then characterizes the submission of the information in response to the Subcommittee’s requests as *ex parte* communication with the Subcommittee. IWAG then “offers” what it says are “facts” about each issue.

2. The information which the Applicant submitted in response to the record requests from the Subcommittee are not *ex parte* communications. *Ex parte* communication, for the purposes of the Subcommittee’s proceedings, is governed by RSA 541-A:36 and Admin. Rule Site 202.30. Both the statute and the rule are designed to prohibit communications “directly or indirectly with any person or party about the merits of an application or petition unless all parties are given notice and an opportunity to participate in the communication.” The record requests were made during the Subcommittee’s public deliberations in this proceeding and the responses were filed in accordance with the Subcommittee’s procedures and provided to all parties to the proceeding. The communication at issue here is therefore not an *ex parte* communication as IWAG alleges. *Ex parte* communications are those which are done without notice to other parties. See Black’s Law Dictionary. That is not the case here. IWAG also attaches to its Motion an email response from Mr. Steven Weber of the Fish and Game Department to an email that IWAG sent to Mr. Weber, with a copy to a number of reporters and some, but not all, of the

parties to this proceeding. The Applicant was not copied on that email from IWAG. Mr. Weber copied Director Normandeau on his response to IWAG. Since the email concerned primarily procedural matters and not the merits of the Application that is the subject of this proceeding and since it has now been provided to all parties, it does not constitute a violation of *ex parte* restrictions.

3. Both the SEC rules and the Administrative Procedures Act allow the reopening of the record. RSA 541-A:30-a, III(i) requires an agency to have a rule addressing reopening of the record. Admin. Rule Site 202.27 (b) specifically addresses this: "If the presiding officer, determines that additional testimony, evidence or arguments are necessary for a full consideration of the issues presented at the hearing, the record shall be reopened to accept the offered items." Paragraph (c) of this rule requires that the presiding officer "specify a date no later than 30 days from the date of receiving the additional testimony, evidence or argument by which other parties shall respond to or rebut the newly received materials." To the extent that the Subcommittee deems it appropriate it could give the parties a specific date by which they could respond to the information submitted by the Applicant. However, such a step seems unnecessary given that the information that has been submitted is factual, and given that IWAG's Motion, in effect, has already responded to each of the submissions. The rule does not require that the Subcommittee allow cross-examination of witnesses concerning the information that has been submitted. RSA 541-A:33, II also provides that "any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially." The Applicant submits that the submission of the responses to record requests from the Subcommittee did not in any way prejudice the interests of the parties.

4. It is a long standing practice of this Committee that its members be allowed to make record requests of any parties to a proceeding and for the responses to such requests to be submitted to the Committee, with copies provided to all of the parties, and for such responses to become a part of the record. This practice is consistent with the Administrative Procedures Act and the Committee's rules and allows for the development of a complete record.

5. The Applicant believes that it is unnecessary for the Subcommittee to reopen the proceeding to allow the parties to submit additional information on the responses to record requests or for cross-examination of parties who have provided responses to the Subcommittee's record requests. If the Subcommittee determines otherwise, the Applicant recommends that it allow a short time frame for the parties to submit written responses to the written information that has been supplied.

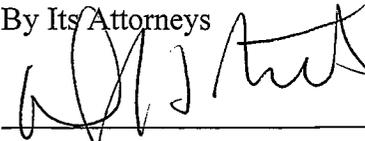
Wherefore, the Applicant respectfully requests that the Presiding Officer:

A. Deny the Motion of Industrial Wind Action Group to Suspend SEC Deliberations and Reopen the Public Record; and

B. Grant such other relief as may be just and equitable.

Respectfully submitted,

Granite Reliable Power, LLC
By Its Attorneys



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Dated: April 26, 2009

Certificate of Service

I hereby certify that, on the date written below, I caused the within Response to be sent by electronic mail or U.S. mail, postage prepaid, to the persons on the attached list.

April 28, 2009

Date



Douglas L. Patch

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