

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2008-04

Application of Granite Reliable Power, LLC
for a Certificate of Site and Facility

May 8, 2009

ORDER GRANTING MOTION TO RE-OPEN, IN PART,
TEMPORARILY SUSPENDING DELIBERATIONS,
ENLARGING TIME FRAMES AND
SETTING PROCEDURAL SCHEDULE

I. BACKGROUND

On July 15, 2008, Granite Reliable Power, LLC, (Applicant) filed with the Site Evaluation Committee (Committee) an Application for a Certificate of Site and Facility for the Granite Reliable Power Wind Park, a renewable energy facility, proposed to be located in the Town of Dummer and the unincorporated places of Dixville, Erving's Location, Odell and Millsfield, all of which are in Coos County. The Application proposes the construction and operation of thirty three (33) wind turbines each having a nameplate capacity of three (3) MW for a total nameplate capacity of ninety-nine (99) MW and associated transmission lines, substations and buildings. The Application also proposes the construction of approximately twelve (12) miles of new access roads and to upgrade approximately 19 miles of existing logging roads.

The Application contained numerous appendices, exhibits and the pre-filed testimony of ten witnesses. The Chairperson of the Committee determined that the Application was complete and designated a Subcommittee to review the Application on August 14, 2008. A public informational hearing was held on October 2, 2008. The Subcommittee visited portions of the proposed site on October 3, 2008. Thereafter, various parties were permitted to intervene in these proceedings. The parties engaged in a comprehensive discovery process, which provided for the propounding of data requests in interrogatory form and several technical sessions, including discussion with various expert witnesses employed by the parties.

The Committee convened adjudicatory hearings in this matter and took testimony on eight days between March 9, 2009 and April 2, 2009. On March 23, 2009, the Subcommittee held an additional public hearing in Lancaster, New Hampshire to receive additional public comment about the proposed project. The parties filed final briefs on April 10, 2009. The Subcommittee held public deliberations on April 17, 20 and 29, 2009.

During the course of the proceedings, the New Hampshire Fish & Game Department (NHF&G) and the Appalachian Mountain Club (AMC) expressed reservations concerning the potential adverse impact of the project on high elevation forests within the area to be developed. Wildlife biologists Will Staats and Jillian Kelley from NHF&G, in pre-filed testimony dated December 28, 2008, testified that the project would have a "severe and unmitigated adverse effect on the natural environment." According to NHFG, the project as proposed would disturb up to 3,747 acres of high elevation forest capable of supporting viable populations of marten, three-toed woodpecker, and Bicknell's thrush. In addition, the presence of infrastructure on the ridgeline would deter lynx from occupying the habitat or traveling through the area.

During the course of the adjudicatory hearings, the Applicant, AMC and NHF&G entered into a High Elevation Mitigation Settlement Agreement, which states: "the provisions of this agreement provide sufficient mitigation to compensate for project impacts to high elevation ecosystems, habitats and species, and resolves any and all concerns regarding the issue of mitigation for impacts to high elevation ecosystems expressed in pre-filed testimony, and unless specifically noted otherwise in this agreement." The Agreement includes permanent conservation of 1,735 acres of land above 2,700 ft elevation and 620 acres of land on Phillips Brook. In addition, the Agreement includes one-time payments of \$200,000 by GRP to NHF&G for high elevation wildlife studies and \$750,000 to secure other high elevation conservation land.

On April 20, 2009, the Subcommittee requested that the NHF&G verify through an onsite visit prior to construction that the high elevation mitigation sites reasonably compensate the project impacts. This request was in the nature of a record request from the Committee. The Subcommittee also requested that the Applicant provide a "root cause analysis" explaining the collapse of a wind turbine in Altona, New York, and a status report on the Federal Aviation Administration's determination of hazards to air navigation posed by the proposed wind turbines.

On April 23, 2009, the Applicant filed a letter explaining its understanding that the Altona turbine failure was caused by a wiring anomaly in two turbines manufactured by General Electric (GE) that impeded the operation of the turbine's pitch control system impacting the shut down capabilities of the turbine. The Applicant further responded that GE is preparing a root cause analysis and the Applicant has no control over that analysis and was unsure as to when it would be complete. Additionally, the Applicant advised the Subcommittee that its original FAA materials were filed in error containing inaccurate turbine heights. The Applicant advised that it had re-filed its materials with the correct height of the turbines and expected the FAA to act on its new filing by the end of May, 2009.

The NHF&G responded by letter, on April 27, 2009, explaining that current site conditions made a site visit extremely difficult due to continuing winter conditions. However, NHF&G offered that they are familiar with the sites, and have access to high quality color aerial photographs taken in 2008. Consequently, NHF&G advised that: 1) both the project and mitigation areas are comprised of spruce-fir forest types in various

age classes, 2) logging has affected approximately 295 acres of mitigation forest, and 3) other aspects of the settlement increase the conservation value of the Agreement.

On April 29, 2009, the Subcommittee determined that it was in the public interest to suspend deliberations. Accordingly, the time frame for a decision on the merits of the Application was enlarged until May 29, 2009.

II. IWAG MOTION

On April 27, 2009, the Industrial Wind Action Group (IWAG) filed a motion to suspend deliberations and re-open the record. IWAG asserts that it should be permitted to respond to the record responses pursuant to SITE 202.27(c). IWAG also asserts that the Sub Committee's requests were *ex parte* communications under SITE 202.30 and R.S.A. 541-A: 36. IWAG claims that several of the intervening parties did not attend the public deliberation hearing and therefore the record requests made by the Subcommittee were *ex parte* communications.

IWAG's allegation of *ex parte* communications is entirely without merit. Whether particular parties did or did not attend the public meeting at which the record requests were made is not relevant. The issuance of a record request during a duly noticed public administrative proceeding and on the record cannot be deemed to be an *ex parte* communication. See, R.S.A. 541-A:36.

On the other hand, IWAG's request for an opportunity to respond to the information provided in a record request is supported by the rules if it is determined that such information is necessary for a full consideration of the issues. See, NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, SITE 202.27. IWAG's motion to re-open the record of this proceeding is granted, in part, as set forth below.

III. DISCUSSION

The Applicant's response to the request for information regarding the status of the FAA permits does not constitute evidence or argument requiring further action. The issuance of a Certificate of Site and Facility in this matter would be of little consequence if the FAA did not issue permits determining that there was no hazard to aviation from the erection of the proposed wind turbines. The relevant issue with respect to turbine heights relates back to cross-examination earlier in the proceeding that showed a discrepancy between particular documents provided by the Applicant. The record was clear by the time of closing arguments, however, that the discrepancy had been reconciled and it is equally clear that the FAA will make its own independent judgment on its own schedule and according to its own standards. Nothing further is required for the Subcommittee to fully consider the issues and nothing provided in the Applicant's April 20, 2003 response regarding turbine heights and the FAA's permitting will be relied on by the Subcommittee in making its required findings in this proceeding. It is conceivable, however, that FAA approval may be a condition to a Certificate.

Additional action is necessary, however, to assess the relevance of the turbine failure at Altona. The Applicant is directed to supply the following information:

1. A copy of any correspondence from GE identifying the root cause of the failure and collapse of the turbines at Altona, New York.
2. Any evidence that indicates whether or not a similar wiring anomaly may exist or does not exist in the Vesta 90 Turbines that are proposed to operate at the proposed site and facility.

Additional action is also necessary to assess the impact of the High Elevation Mitigation Settlement Agreement. NHF&G is directed to provide additional information regarding the lands that the Applicant has offered in mitigation of the impacts on the proposed site. Specifically, the Subcommittee requests that NHF&G, to the extent practicable, conduct an on-site visit to the mitigation lands, or provide information from other reliable sources in order to:

1. Verify that the spruce-fir forest boundaries correspond with boundaries estimated from aerial photography.
2. Determine if additional logging has occurred within the mitigation area since 2008 and, if so, to what extent.
3. Determine, for each logged area, the years since logging and the general forest condition.
4. Determine if habitat characteristics within the mitigation lands are adequate to support viable populations of marten, three-toed woodpecker, and Bicknell's thrush.
5. Determine if, cumulatively, mitigation landscape characteristics are adequate to support lynx occupation or travel through the area.

IV. PROCEDURAL SCHEDULE

The parties shall have the opportunity to respond to the information provided in response to the Subcommittee's requests regarding the Altona turbine failure and the mitigation parcels. The parties shall adhere to the following procedural schedule:

1. Responses to the Subcommittee's requests set forth above shall be filed with the Subcommittee and copies to all parties by May 21, 2009.
2. Written replies to the responses to the requests from other parties shall be filed with the Subcommittee and copies to all parties by May 26, 2009.
3. The Subcommittee shall re-open its adjudicatory phase and permit cross examination of the persons sponsoring the responses to the Subcommittee's requests at a public hearing. A separate Order of Notice will be issued to schedule the hearing.
4. Thereafter, the record will close and no further data or evidence will be received by the Subcommittee unless necessary to a full consideration of the issues.

Based on the foregoing, it is hereby

ORDERED, that the Motion of IWAG to Suspend Deliberations and Re-Open the Record is Granted In Part; and it is

FURTHER ORDERED, that the Applicant respond to the Subcommittee's request set forth above by May 21, 2009; and it is

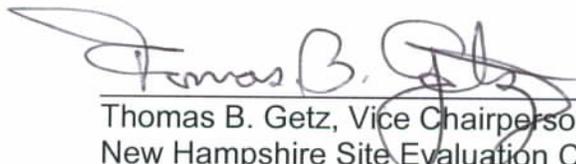
FURTHER ORDERED, that NHF&G respond to the Subcommittee's request set forth above by May 21, 2009; and it is

FURTHER ORDERED, that a separate order of notice shall issue scheduling a further hearing as contemplated herein; and it is

FURTHER ORDERED, that it is in the public interest to suspend deliberations in this docket pending the filing of the aforementioned responses to data requests and pending a hearing thereon; and it is

FURTHER ORDERED, that it is in the public interest to enlarge the time for the issuance or denial of a Certificate of Site and Facility in this docket to May 29, 2009.

So ordered, this 8th day of May, 2009.



Thomas B. Getz, Vice Chairperson
New Hampshire Site Evaluation Committee
Subcommittee Presiding Officer