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May 21, 2009

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

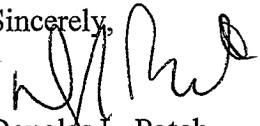
**Re: Docket No. 2008-04 - Application of Granite Reliable Power,  
LLC for a Certificate of Site and Facility for the Granite Reliable  
Power Wind Park in Coos County**

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 Response to Fish and Game Department's Response to the May 8, 2009 Order.

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

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**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 RESPONSE TO FISH AND GAME DEPARTMENT'S RESPONSE TO  
THE MAY 8, 2009 ORDER**

NOW COMES Granite Reliable Power, LLC ("GRP" or "the Applicant") by and through its undersigned attorney and responds to the Fish and Game Department's Response to the May 8, 2009 Order, dated May 14, 2009, in the above-captioned matter ("Response") by stating as follows:

1. On May 8, 2009 the Presiding Officer in the above-captioned matter issued an Order Granting Motion to Re-open, in Part, Temporarily Suspending Deliberations, Enlarging Time Frames and Setting Procedural Schedule (the "May 8, 2009 Order"). The Order requested that the Fish and Game Department (the "Department"), "to the extent practicable, conduct an on-site visit to the mitigation lands, or provide information from other reliable sources" in order to verify or determine five different aspects of the mitigation area that is part of the High Elevation Mitigation Plan presented to the Site Evaluation Committee (the "SEC" or the "Subcommittee") in this docket.

2. In its Response, the Department said that "the Subcommittee's most recent inquiry is misplaced." Response at par. 10. The Department further said that the Subcommittee

should either direct the Applicant to respond to the Subcommittee's request or employ a consultant to do so. The Department also indicated that the Fish and Game witnesses were questioned in depth about the High Elevation Mitigation Agreement and the protections that will be extended to the lands to be transferred and the current conditions of those lands, and cited to the hearing transcripts. The Department correctly pointed out that the parties, Subcommittee members and Subcommittee counsel had an opportunity during the hearings to ask questions of Fish and Game witnesses and other witnesses about the lands to be transferred. Response at par. 4. The Department provided further citations to the transcript where information about these lands was discussed, Response at par. 5, and provided information about what the Department intends to do once the project is permitted. Response at par. 7. The Department also pointed out that "an objective and scientific determination of whether or not the almost 1300 acres of mitigation lands on Mt. Kelsey will support viable populations of marten, three-toed woodpeckers and Bicknell's thrush, cannot be made until after the project is constructed because there is no way to know for certain to what extent the species of concern will continue to use the Mt. Kelsey parcel once the turbines are constructed on the ridge." Response at par. 9.

3. The Applicant submits that there is sufficient record evidence, i.e. the testimony and exhibits provided during the hearings and the subsequent submissions by the Department, to support the finding that the High Elevation Mitigation Plan will bring substantial benefits to the state which will sufficiently compensate for any disturbance created by the construction or operation of the project. The Applicant notes the Department's reiteration of this position in the Response: "It is the professional opinion of Fish and Game staff, based on their experience and knowledge of the North Country's ecosystems, that the provisions of the Agreement provide

sufficient mitigation to compensate for the project's impacts to high elevation ecosystems, habitats and species." Response at par. 3.

4. The Applicant respectfully refers the Subcommittee to the Applicant's brief, pages 49-51, which contains numerous citations to the portions of the transcript where the High Elevation Mitigation Plan was described and evaluated for the Subcommittee. In particular, the Applicant's brief highlights the conclusions of several witnesses that the High Elevation Mitigation Plan provided more than sufficient mitigation for the project. This includes testimony by Mr. Staats and Ms. Kelly of the Department, who stated that the agreement resolves any and all concerns they might have regarding mitigation issues. *Tr. Day VI*, p.82:1-2 and *Tr. Day IV*, pp.162:23 to 163:8. Dr. Publicover also testified that the High Elevation Mitigation Settlement Agreement provided sufficient mitigation to compensate for the Project's impacts to high elevation ecosystems, habitats and species, and that it resolves any and all concerns regarding the issue of high elevation mitigation. *Tr. Day IV*, p. 208:5-10 and 265:3-5. The record also includes testimony by Mr. Pelletier that the habitat value of the project with the mitigation plan was higher than no Project and no mitigation. *Tr. Day IV*, pp. 19:4-18, 21:1-5 and 113:16-22. Mr. Lloyd-Evans also testified that the Settlement agreement is a reasonable attempt to replace the habitat of high elevation spruce-fir forests. *Tr. Day VII*, pp. 13:10-19 and 21:21 to 22:3.

5. Furthermore, in response to the SEC's second question, the supplemental testimony of Mr. Gravel and Mr. Pelletier states that the protected lands are "relatively undisturbed." *Gravel and Pelletier Revised Supplemental Testimony* at p. 3:10 [hereinafter *Gravel and Pelletier Testimony*]. The Applicant has confirmed, via discussions with the landowners, that no logging has occurred on these properties since 2008. In addition, once GRP

exercises the option agreements for mitigation parcel lands, the current landowners will have no logging rights, therefore no logging will occur on these properties.

6. Concerning the SEC's third question, Mr. Gravel and Mr. Pelletier refer to the high elevation forests on Mt. Kelsey as "intact and contiguous," *Gravel and Pelletier Testimony* at 19:10, and state that the protected areas of Mt. Kelsey are likely "old growth and primary forests." *Id.* at 24:4-11 and 25:6-16. *See also* Appendix 16 to Petitioner's Exhibit 1.2, p. 5 (describing mitigation sites on Mt. Kelsey).

7. Regarding the SEC's fourth question, the Applicant submits the following evidence from the record that has already been compiled. Generally, Mr. Staats testified that "we tried to work at developing the best Mitigation Plan that we could to try to protect these species that are referred to in here." *Tr. Day VI*, p. 72:4-6. Mr. Staats was referring to the species about which the SEC has raised questions. Mr. Staats also testified that the Department predicted that the mitigation areas would provide habitat for Bicknell's thrush. *Tr. Day IV*, p. 174:12-19. Furthermore, the breeding bird survey (Appendix 23 to Petitioner's Exhibit 1.3) and the winter track survey (Appendix 25 to Petitioner's Exhibit 1.3) both demonstrate populations of Bicknell's Thrush, three-toed woodpeckers, and marten on Mt. Kelsey, indicating that there is habitat for those species on the more than 1,200 acres slated to be protected by the High Elevation Mitigation Plan. *See Tr. Day VI*, p. 62:5-7 (statement, by Mr. Staats, that the reason the mitigation plan was developed was to protect the species in question).

8. Concerning the SEC's final question, Mr. Staats also testified that the high elevation parcels could be part of a "larger piece of the lynx's home range if they chose to occupy the area," demonstrating that the high elevation parcels include the natural aspects which attract and support Lynx. *Tr. Day IV* p. 174:7-11. Furthermore, Appendix 25 to Petitioner's

Exhibit 1.3, states that “[a]nnual snow track surveys by NH state wildlife biologists have not discovered evidence to suggest there is currently a resident population of lynx in New Hampshire (Will Staats, Personal communication).” Appendix 25 to Petitioner’s Exhibit 1.3, at p.17.

9. The Applicant notes that the mitigation settlement agreement includes, in addition to \$200,000 for conducting studies on the impacts of the Project, a compensation ratio that is greater than 22:1, preserving approximately 1,735 acres of relatively undisturbed forest at or above 2,700 feet. *Gravel and Pelletier Testimony* at 4-5.

10. In view of the foregoing, the Applicant respectfully submits that there is no need for any additional evidence in order for the Subcommittee to make the finding under RSA 162-H:16, IV. (c) that the project will not have an unreasonable adverse effect on the natural environment.

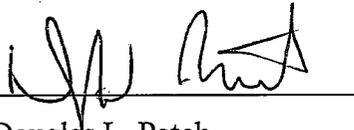
11. The Applicant further submits that this proceeding has already been delayed significantly beyond the statutorily prescribed time frames and that any further delay would not be in the public interest. RSA 162-H:14. The Department’s request that the Subcommittee hire a consultant to answer the 5 questions posed by the Subcommittee during its deliberations will unquestionably cause further delay, a situation that is inconsistent with the shortened time frames for evaluating renewable energy projects instituted by the Legislature in 2007. *See* N.H. Laws of 2007, Chapter 364:1. In amending the site evaluation process to provide a more streamlined process for renewable energy projects under 120 MW, the Legislature found that “[i]t is in the public interest and to the benefit of New Hampshire to encourage the development of renewable energy.” *Id.* Thus, inasmuch as the Department’s request that the Subcommittee hire a consultant at this late stage of the proceedings will cause additional delay, the request is inconsistent with the above-referenced Legislative directive.

Wherefore, the Applicant respectfully requests that the Subcommittee:

- A. Determine based on the record that was completed in April and the subsequent filings that there is no need for additional determinations or evidence on the mitigation land; and
- B. Grant such other relief as may be just and equitable.

Respectfully submitted,

Granite Reliable Power, LLC  
By Its Attorneys



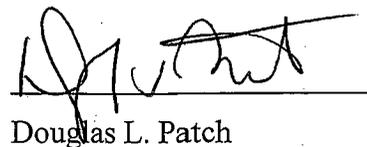
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Dated: May 21, 2009

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.

\_\_\_\_\_  
Date: May 21, 2009



Douglas L. Patch