

August 14, 2009

William L. Chapman  
George W. Roussos  
Howard M. Moffett  
James E. Morris  
John A. Malmberg  
Martha Van Oot  
Douglas L. Patch  
James P. Bassett  
Emily Gray Rice  
Steven L. Winer  
Peter F. Burger  
Lisa Snow Wade  
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Jennifer A. Eber  
Jeffrey C. Spear  
Connie Boyles Lane  
Judith A. Fairclough  
Todd C. Fahey  
Vera B. Buck  
James F. Laboe  
Robert S. Carey  
John M. Zarembo  
Courtney Curran Vore  
Justin M. Boothby  
Heidi S. Cole  
Jeremy D. Eggleton  
Rachel A. Goldwasser  
Joshua M. Pantesco

**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

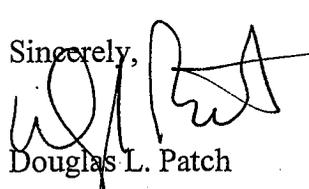
**Re: Docket No. 2008-04 - Application of Granite Reliable Power,  
LLC for a Certificate of Site and Facility for the Granite Reliable  
Power Wind Park in Coos County**

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 for Rehearing, Reconsideration and/or Clarification.

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

APPLICATION OF GRANITE RELIABLE POWER, LLC  
FOR CERTIFICATE OF SITE AND FACILITY  
FOR GRANITE RELIALE POWER WINDPARK  
IN COOS COUNTY

Contested Motion for Rehearing, Reconsideration and/or Clarification

NOW COMES Granite Reliable Power, LLC (“GRP”), the Applicant in the above-captioned matter, pursuant to RSA 541:3 and Admin. Rule Site 202.29 and respectfully requests that the Subcommittee of the New Hampshire Site Evaluation Committee designated to consider the application in the above-captioned matter (the “Subcommittee”) rehear, reconsider and/or clarify two conditions contained in the Order it issued in this docket on July 15, 2009. In support of this Motion, GRP states as follows:

1. On July 15, 2009 the Subcommittee issued the Decision Granting Certificate of Site and Facility with Conditions (the “Decision”) and the Order and Certificate of Site and Facility (the “Order”). In the Decision and Order the Subcommittee granted a certificate subject to a number of different conditions.
2. Pursuant to RSA 162-H:11, decisions of the Committee are reviewable in accordance with RSA 541. Under RSA 541:3, any party to the proceeding may ask for rehearing and reconsideration of a decision of the Committee. GRP is the Applicant in

this matter and therefore a proper party to bring this Motion for Rehearing,

Reconsideration and/or Clarification.

3. Pages 2-3 of the Order, in the fourth "Further Ordered" paragraph, contain the following condition:

Further Ordered that, this Certificate is conditioned on the present ownership structure of the Applicant, *to wit* the Applicant is owned by Noble Environmental Power, LLC (75%) and Freshet Wind Energy, LLC (25%), and neither the Applicant, nor the Applicant's assets shall be transferred by sale or other method to any other person or entity without the prior written approval of the Subcommittee. In the event of an unapproved sale, this Certificate shall be null and void;

4. GRP seeks clarification from the Subcommittee that this condition is not meant to prevent it from assigning its rights under the certificate for collateral security purposes to aid in obtaining financing for the Project. In order to obtain financing for projects such as this one, the developer typically must assign to lenders the rights to any permits and must also grant the lenders a security interest in the developer's assets. Accordingly, GRP seeks clarification from the Subcommittee that GRP will not be in violation of this, or any other condition, or of the Order or Decision, if GRP assigns such interests to its lenders without first obtaining the Subcommittee's approval. (GRP points to the Assignment included in Appendix 51, as Exhibit B to the Payment in Lieu of Tax Agreement with Coos County, marked as Petitioner Exhibit 2.2, in this proceeding, as an example of the type of written assignment that is likely to be required.)

5. Secondly, Page 5 of the Order, in the 19<sup>th</sup> "Further Ordered" paragraph, contains the following condition:

Further Ordered that, if after notice and an opportunity to be heard, the Site Evaluation Subcommittee determines that the Project is having an unreasonable adverse impact on any species, it may take appropriate action within its jurisdiction;

6. GRP submits that this condition, because of the uncertainty which it creates, is very likely to prevent GRP from obtaining financing for the Project. In this condition the Subcommittee appears to be reserving to itself the right to change the finding that it made in the Decision, page 61, and the Order, page 2, that the Project will not have an unreasonable adverse impact on the natural environment. It is very likely that lenders will be concerned that, pursuant to this condition, the Subcommittee may at some point in the future take an action, such as curtailing operations of turbines or shutting certain turbines down, that could adversely impact the economics of the Project. By leaving the door open to such potential actions, this condition adds an element of uncertainty that is likely to make lenders very reluctant to provide the funds necessary to construct this Project. The language of this condition limits the Subcommittee's future conduct to "appropriate action within its jurisdiction". Such actions, under RSA 162-H:4 and 12, include, among other things, the power to enforce the terms or conditions of a certificate, and to suspend or revoke a certificate. The question that this condition presents is whether enforcing this particular condition gives the Subcommittee the authority to change its original finding (of "no unreasonable adverse effect upon the natural environment") and to order GRP to curtail operations or take other actions to a degree that would jeopardize the economics of the Project, even after the appeal period from the Decision and Order has run. Thus, when this condition is read in conjunction with the statutes that describe the Subcommittee's jurisdiction and the actions within that jurisdiction, it is arguable that the Subcommittee has left the door open to make a new and different finding on the issue of no unreasonable adverse impact upon the natural environment. Because it is unclear whether the Subcommittee could or would use this

condition as the basis for ordering the curtailment of the Project's operations at some future point, substantial uncertainty is created by this condition.

7. Attached to this Motion is an affidavit of Martin Pasqualini, the Managing Director of a company that provides financial advisory services to developers of renewable energy projects, in which Mr. Pasqualini indicates that the condition cited above is very likely to prevent GRP from obtaining financing for this Project.

8. Although GRP proposed a similar condition as part of the attachment to its post-hearing brief, it included limiting language which was not reflected in the Order. However, having now had the benefit of additional time to assess the financial market and how lenders are currently behaving in this market, GRP believes that even if the Subcommittee had adopted the language GRP proposed in its entirety, such a condition would be problematic. GRP recognizes that the Committee imposed a similar condition upon Lempster Wind, LLC. However, GRP believes that Lempster's situation is distinguishable from GRP's for a number of reasons. Lempster involved a smaller wind park with different issues. In the Lempster case the developer was a subsidiary of a parent company that had the ability to finance the construction of the project with the company's own financial resources. In addition, the Lempster project was certificated and constructed before the recent changes in the financial market. Accordingly, given that GRP's circumstances are very different from Lempster's, the Subcommittee should not impose this condition upon GRP simply because it was imposed upon Lempster.

9. In view of the foregoing, GRP proposes that the 19<sup>th</sup> Further Ordered condition be either eliminated or modified to read as follows:

Further Ordered that, if, based on the results of any of the avian studies conducted pursuant to the conditions of this Order, NHF&G has significant concern about the Project's impact on any species that is the subject of those studies, GRP will work with NHF&G and take commercially reasonable and appropriate actions to minimize or mitigate such impacts;

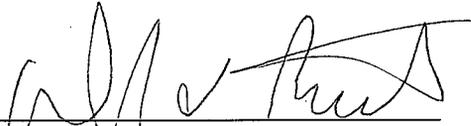
10. GRP also wishes to point out to the Subcommittee, as it did earlier in this docket, that its powers with regard to state endangered or threatened species are specifically limited by RSA 212-A:13, III. This statute says that the provisions of the Endangered Species Conservation Act or the rules adopted under that act "shall not in any way interfere with the siting or construction of any bulk power supply facility or energy facility as defined in RSA 162-H:2." GRP submits that the condition referenced above in paragraph 4, as written, relates to "any species" and thus implicates species covered by Chapter 212-A. Thus, the condition interferes with the siting and construction of a renewable energy facility and therefore violates RSA 212-A:13, III. Accordingly, the condition should either be modified as proposed above or eliminated.

11. As required by Admin. Rule Site 202.14(d) the Applicant made a good faith effort to obtain the concurrence of the parties. Counsel for the Public does not concur with either of the Applicant's requests; Kathy Keene does not agree with this motion; Lisa Linowes objects; Fish and Game takes no position with respect to the ownership request, but does not assent to the request regarding species; the New Hampshire Wind Energy Association supports this motion; AMC does not concur with either part of the motion. The Applicant sent an email to all the parties but had not heard back from any party not mentioned above as of the time that it filed this motion.

Wherefore, for the reasons noted above, the Moving Parties respectfully request that the New Hampshire Site Evaluation Committee rehear, reconsider and/or clarify the two conditions in its Decision and Order noted above.

Respectfully submitted,

GRANITE RELIABLE POWER, LLC

By:   
Douglas L. Patch and Susan S. Geiger  
Its Attorneys  
Orr & Reno, P.A.  
One Eagle Square  
Concord, NH 03301  
Phone: (603) 223-9161  
dpatch@orr-reno.com

Dated: August 14, 2009

Certificate of Service

A copy of this Motion has been served by either first class mail or email this 14<sup>th</sup> day of August, 2009 on the attached service list.

August 14, 2009  
Date

  
Douglas L. Patch

APPLICATION OF GRANITE RELIABLE POWER, LLC

DOCKET NO. 2008-04

**Service List**

**Sub-Committee Members**

Thomas Getz, Vice Chairman Site Evaluation Committee NH Public Utilities Commission 21 South Fruit St., Suite 10 Concord, NH 03301  <u><a href="mailto:Tom.Getz@puc.nh.gov">Tom.Getz@puc.nh.gov</a></u>	Robert Scott, Director Air Resources Division Dept. of Environmental Services 29 Hazen Dr., Box 95 Concord, NH 03302-0095 <u><a href="mailto:Robert.Scott@des.nh.gov">Robert.Scott@des.nh.gov</a></u>
Glenn Normandeau, Executive Dir. NH Fish & Game Department 11 Hazen Drive Concord, NH 03301 <u><a href="mailto:GLENN.NORMANDEAU@WILDLIFE.NH.GOV">GLENN.NORMANDEAU@WILDLIFE.NH.GOV</a></u>	Donald M. Kent, Administrator NH Natural Heritage bureau 172 Pembroke Road, Box 1856 Concord, NH 03302-1856 <u><a href="mailto:DONALD.M.KENT@DRED.STATE.NH.US">DONALD.M.KENT@DRED.STATE.NH.US</a></u>
Michael Harrington, Staff Engineer NH Public Utilities Commission 21 South Fruit St., Suite 10 Concord, NH 03301 <u><a href="mailto:michael.harrington@puc.nh.gov">michael.harrington@puc.nh.gov</a></u>	William Janelle, Assistant Director Project Development Department of Transportation PO Box 483 Concord, NH 03302-0483 <u><a href="mailto:BJANELLE@DOT.STATE.NH.US">BJANELLE@DOT.STATE.NH.US</a></u>
Jack Ruderman, Deputy Director NH Office of Energy and Planning 4 Chenell Drive Concord, NH 03301 <u><a href="mailto:JACK.RUDERMAN@NH.GOV">JACK.RUDERMAN@NH.GOV</a></u>	

## Committee Members Not on Sub-Committee

<p>Thomas Burack, Chairman          Site Evaluation Committee          Department of Environmental Services          29 Hazen Drive, Box 95          Concord, NH 03302-0095  <a href="mailto:Thomas.Burack@des.nh.gov">Thomas.Burack@des.nh.gov</a></p>	<p>Harry T. Stewart, Director – Water Division          Department of Environmental Services          29 Hazen Drive, Box 95          Concord, NH 03302-0095  <a href="mailto:Harry.Stewart@des.nh.gov">Harry.Stewart@des.nh.gov</a></p>
<p>George Bald, Commissioner          Dept. of Resources &amp; Economic Dev.          172 Pembroke Road, Box 1856          Concord, NH 03302-1856  <a href="mailto:george.bald@dred.state.nh.us">george.bald@dred.state.nh.us</a></p>	<p>Brook Dupee          Department of Health &amp; Human Services          Division of Public Health Services          29 Hazen Drive          Concord, NH 03301  <a href="mailto:bdupee@dhhs.state.nh.us">bdupee@dhhs.state.nh.us</a></p>
<p>Ted Austin, Director          Division of Parks &amp; Recreation          Dept. of Resources &amp; Economic Dev.          172 Pembroke Road, Box 1856          Concord, NH 03302-1856  <a href="mailto:Ted.austin@dred.state.nh.us">Ted.austin@dred.state.nh.us</a></p>	<p>Brad W Simpkins, Interim Director          Division of Forests &amp; Lands          Dept. of Resources &amp; Economic Dev.          172 Pembroke Road, Box 1856          Concord, NH 03302-1856  <a href="mailto:brad.simpkins@dred.state.nh.us">brad.simpkins@dred.state.nh.us</a></p>
<p>George Campbell, Commissioner          NH Department of Transportation          7 Hazen Dr., Box 483          Concord, NH 03302-0483  <a href="mailto:GCAMPBELLCOMMISSIONER@DOT.STATE.NH.US">GCAMPBELLCOMMISSIONER@DOT.STATE.NH.US</a></p>	<p>Graham Morrison, Commissioner          NH Public Utilities Commission          21 South Fruit St., Suite 10          Concord, NH 03301  <a href="mailto:Graham.Morrison@puc.nh.gov">Graham.Morrison@puc.nh.gov</a></p>
<p>Clifton Below, Commissioner          NH Public Utilities Commission          21 South Fruit St., Suite 10          Concord, NH 03301  <a href="mailto:Clifton.Below@puc.nh.gov">Clifton.Below@puc.nh.gov</a></p>	

<b>Committee Staff:</b>	
Jane Murray, Exec. Sec. Dept. of Environmental Services 29 Hazen Dr., Box 95 Concord, NH 03301 <a href="mailto:jane.murray@des.nh.gov">jane.murray@des.nh.gov</a>	Michael J. Iacopino Brennan Caron Lenehan & Iacopino 85 Brook Street Manchester, NH 03104 <a href="mailto:miacopino@bclilaw.com">miacopino@bclilaw.com</a>
<b>Counsel to the Applicant:</b>	
Douglas L. Patch, Esquire Orr & Reno One Eagle Sq., Box 3550 Concord, NH 03301 <a href="mailto:DPatch@Orr-Reno.com">DPatch@Orr-Reno.com</a>	Susan Geiger, Esquire Orr & Reno One Eagle Sq., Box 3550 Concord, NH 03301 <a href="mailto:Sgeiger@Orr-Reno.com">Sgeiger@Orr-Reno.com</a>

<b>INFORMATION ONLY:</b>	
Chris Jensen NH Public Radio Bethlehem, NH 03574 <a href="mailto:Chris416jensen@aol.com">Chris416jensen@aol.com</a>	Jonathan S. Frizzell PO Box 137 Colebrook, NH 03576-0137 <a href="mailto:jon@waystackfrizzell.com">jon@waystackfrizzell.com</a>
Barbara Tetreault Berlin Daily Sun 164 Main Street Berlin, N.H. 03570 <a href="mailto:barbara@berlindailysun.com">barbara@berlindailysun.com</a>	

<p><b>Intervenors:</b></p> <p>Lisa Linowes  286 Parker Hill Road  Lyman, NH 03585  <a href="mailto:llinowes@windaction.org">llinowes@windaction.org</a></p> <p>For: Industrial Wind Action Group</p>	<p>Farrell S. Seiler, Chairman  NH Wind Energy Assoc.  134 Main St., Box 693  Littleton, NH 03561  <a href="mailto:windinfo@charter.net">windinfo@charter.net</a></p>
<p>David Publicover, Sr. Staff Scientist  Appalachian Mountain Club  Po Box 298  Gorham, NH 03581  <a href="mailto:dpublicover@outdoors.org">dpublicover@outdoors.org</a></p>	<p>Bill Gabler  Clean Power Development  130 Pembroke Road, Suite 100  Concord, NH 03301  <a href="mailto:bill@cleanpowerdevelopment.us">bill@cleanpowerdevelopment.us</a></p>
<p>Kathlyn J. Keene  22 North Road  PO box 163  Jefferson, NH 03583  <a href="mailto:mollydog@ncia.net">mollydog@ncia.net</a></p>	<p>Sonya M. Sheldon  PO Box 11  Colebrook, NH 03576  <a href="mailto:apeace@localnet.com">apeace@localnet.com</a></p>
<p>Robert A. Keene  22 North Road  PO Box 163  Jefferson, NH 03583  <a href="mailto:rkeene@centralpaper.com">rkeene@centralpaper.com</a></p>	<p>Jon Odell  128 Middle Street  Lancaster, NH 03584  <a href="mailto:jdodell49@verizon.net">jdodell49@verizon.net</a></p>
<p>Wayne R. Urso  PO Box 90  Errol, NH 03579  <a href="mailto:Wayne@TheUrsos.com">Wayne@TheUrsos.com</a></p>	

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

Docket No. 2008-04

APPLICATION OF GRANITE RELIABLE POWER, LLC  
FOR CERTIFICATE OF SITE AND FACILITY  
FOR GRANITE RELIALE POWER WINDPARK  
IN COOS COUNTY

**Affidavit of Martin Pasqualini**  
**Regarding Ability to Finance the Granite Reliable Power, LLC Wind Power Project**  
**Based on Condition in New Hampshire Site Evaluation Subcommittee Order**

The undersigned hereby states under penalties of perjury as follows:

1. I am a founding member of CP Energy Group, LLC (“CPE”), a company engaged in the business of providing financial advisory services to developers of and institutional investors in renewable energy electric generation projects, where I hold the position of Managing Director. In that capacity I have been involved in numerous financings of wind power projects in the United States, and am familiar with the current financing market. Over the past 4 years I have acted as a financial advisor in the financing of over 30 wind power projects in 12 states, totaling over 6,000 MWs and \$3.5 billion in capital investment. A copy of my biography is attached to this Affidavit.
2. I am familiar with the 99MW wind power project that Granite Reliable Power, LLC is proposing to finance and build in Coos County in New Hampshire (the “Project”).
3. I have read the Decision Granting Certificate of Site and Facility with Conditions (the “Decision”) and the Order and Certificate of Site and Facility (the “Order”)

dated July 15, 2009 in the above-captioned matter. I have focused in particular on the 19<sup>th</sup>

Further Ordered paragraph on Page 5 of the Order, which contains the following condition:

Further Ordered that, if after notice and an opportunity to be heard, the Site Evaluation Subcommittee determines that the Project is having an unreasonable adverse impact on any species, it may take appropriate action within its jurisdiction;

4. The wording of this condition may reasonably be construed as reserving to the Subcommittee the right to change the finding that it made in the Decision, page 61, and the Order, page 2, that the Project will not have an unreasonable adverse impact on the natural environment and to take future action such as ordering the Project to curtail operations or shut down completely, both of which will adversely affect the Project's economics and its prospects for attracting third party debt and equity financing.

5. I have been involved in the financing of other wind projects that have encountered financing difficulties due to open-ended permitting language that called into question the magnitude and timing of project revenue. Based on my knowledge and experience, it is my professional opinion that the condition cited above is very likely to prevent GRP from obtaining financing for the Project. As presently worded, this condition adds an element of uncertainty that is likely to be troublesome to lenders and tax equity investors. Since lenders and tax equity investors rely on the revenue stream from the sale of energy and renewable attributes produced by the windpark for repayment of debt and realization of their targeted return respectively, they are adverse to elements of uncertainty regarding a project's revenue stream. Because the above-referenced condition creates the potential for triggering events that would negatively alter the Project's revenues, and because lenders and tax equity investors would likely not be able to quantify, control or effectively mitigate against the impact of those events, I believe that lenders and equity investors will react to this condition by either refusing to provide

the Project with financing or by proposing financing upon onerous terms and conditions that would be unreasonable or unfeasible for the Project's owners to accept.

6. Other than the aforementioned condition, we believe that this is a very attractive and economically viable project that is likely to be viewed favorably by lenders.

  
\_\_\_\_\_  
Witness

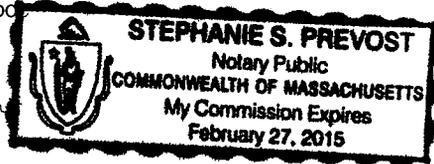
  
\_\_\_\_\_  
Martin Pasqualini

Sworn before me this 12 day of August, 2009.

  
\_\_\_\_\_  
Notary Public/Justice of the Peace

My Commission Expires: 2/27/2015

587497\_1.DOC



Martin Pasqualini

Martin Pasqualini, a managing director of CP Energy Group, LLC ("CPE"), has over 18 years of experience executing a wide variety of project and structured financings, including extensive experience representing sponsors, equity investors, lenders and construction contractors in connection with the development, financing, operation, acquisition and disposition of domestic and international power projects. Since 2004, CPE has advised on approximately 30 renewable energy project financings representing 6,000 MW of installed electric capacity and \$3.5 billion of capital investment. CPE has also advised developers (Orion Energy, Eurus Energy America and Foresight Energy) in connection with wind energy development platform dispositions and joint ventures, as well as single project dispositions. Mr. Pasqualini has negotiated debt and equity financing documents and the entire range of project documentation (power purchase agreements, operations and maintenance agreements, wind easement agreements, construction contracts and manufacturer's warranty agreements) associated with the development and financing of wind-powered electricity generating projects. He has worked on energy projects throughout the continental United States and has also worked on energy projects in Puerto Rico, Jamaica, Costa Rica, Scotland and the Dominican Republic. In addition, Mr. Pasqualini has been a member of the board of directors of PowerOptions since his initial election in 2000. PowerOptions is the largest power buying group in Massachusetts, with more than 400 members and annual purchases totaling \$250 million in electricity and \$10 million in natural gas. Prior to joining CPE, Mr. Pasqualini was a Managing Director in the Tax Products Group at BTM Capital Corporation and was formerly a partner in the Project and Structured Finance Group of Bingham Dana LLP (now Bingham McCutchen LLP), an international law firm based in Boston. Mr. Pasqualini earned his Bachelor of Arts, summa cum laude, from Boston College and was elected to Phi Beta Kappa. He earned his J.D., cum laude, from Boston College Law School and has been a member of the Board of Overseers of Boston College Law School since 2005.