

August 19, 2009

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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

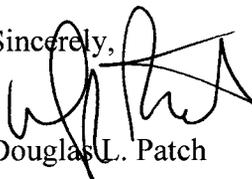
Re: Docket No. 2008-04 - Application of Granite Reliable Power, LLC for a Certificate of Site and Facility for the Granite Reliable Power Wind Park in Coos County

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 Response to Motion of Fish and Game Department for Rehearing or Amendment and the Applicant's Objection to Motions for Rehearing of Industrial Wind Action Group and Public Counsel.

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

Sincerely,



Douglas L. Patch

cc. Service List
Enclosure

Maureen D. Smith
(Of Counsel)

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 MOTIONS FOR REHEARING OF
INDUSTRIAL WIND ACTION GROUP AND PUBLIC COUNSEL**

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 For Rehearing or Amendment dated August 14, 2009 ("IWAG Motion") and Motion of Counsel for the Public for Rehearing dated August 14, 2009 ("Public Counsel Motion") in the above-captioned matter, by stating as follows:

1. RSA 541:4 requires that a rehearing motion "set forth every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." RSA 541:3 authorizes the Site Evaluation Committee to grant rehearing upon a showing that good reason exists for such relief. Such a showing may be made "by new evidence that was unavailable at the original hearing, or by identifying specific matters that were either 'overlooked or mistakenly conceived.'" *Verizon New Hampshire Wire Center Investigation*, 91 NH PUC 248, 252 (2006), quoting *Dumais v. State*, 118 N.H. 309 (1978). "A successful motion does not merely reassert prior arguments and request a different outcome. See *Connecticut Valley Electric Co.*, 88 NH PUC 355, 356 (2003)." *Id.*

2. In his Motion, Counsel for the Public asks the Subcommittee to hold a rehearing to reconsider its finding that the Applicant demonstrated adequate financial capability and to reconsider the condition that it ordered that the Applicant not begin construction until financing is committed. GRP submits that the Committee thoroughly considered and properly addressed the issue of whether the Applicant has the adequate financial capability to own and operate this project and therefore should deny Public Counsel's Motion for Rehearing.

3. The only issue Public Counsel raises in his motion is the Applicant's financial capability. Public Counsel argues that "[a]t the time of the hearings neither the Applicant nor its parent company possessed sufficient capital or credit to pay for the construction of the facility." Public Counsel Motion, par. 9, page 2. Public Counsel argues, therefore, that without concrete information about the terms and conditions of the financing, there is no "assurance the project will be constructed and operated in continuing compliance with the certificate." Motion, par. 10, page 3. Public Counsel alleges that the law must be interpreted to require a showing of present monetary resources, not general financial acumen, and recommends that the Subcommittee require the Applicant to submit the actual commitment of financing and a description of all material terms and conditions, and that it provide him 10 days to review the information, as well as the right to submit comments on the financing and to request a hearing before the Subcommittee. The finding the Subcommittee must make that is relevant to the issue Public Counsel raises is that the Applicant has "adequate financial... capability to assure construction and operation of the facility". RSA 162-H:16,IV(a). Public Counsel's interpretation of the law is invalid as it applies a strained definition of the word "capability" which is inconsistent with its plain meaning. Moreover, Public Counsel's position is inconsistent with the long standing interpretation the Site Evaluation Committee has given to this word and this statutory

requirement. As the Subcommittee properly noted, based on its experience and information in the record, GRP demonstrated that it has the requisite financial capability to assure construction and operation of the Project. Counsel for the Public raised a number of times during the proceeding the argument that the Applicant did not have a complete financing package in place. However, the Subcommittee properly rejected Public Counsel's position because it used an incorrect standard.. See Tr. Day I of Deliberations, p.31:5 – p.33:4. As is clear from the record, Public Counsel's own consultant, Mr. Sundstrom, testified that the Applicant had demonstrated the capability to undertake the financing for this Project. Tr. Day V, p.179:7-12; p.196:2-15. The condition that the Subcommittee imposed requiring financing before construction begins is consistent with the law and more than sufficient to protect the public and the environment from any unreasonable adverse effects. For these reasons it is apparent that Public Counsel has not raised any new issues that the Subcommittee has not already thoroughly and properly considered and therefore his motion should be denied.

4. In its Motion, the Industrial Wind Action Group ("IWAG") asks the Subcommittee of the New Hampshire Site Evaluation Committee in the above-captioned matter ("the Subcommittee") to rehear or amend its July 15, 2009 Decision and Order and raises issues with regard to: consideration of alternatives; the decommissioning conditions that are part of the review of financial, managerial and technical capability; orderly development including impact on property values and tourism, and the system impact study ("SIS"); impact on the natural environment; and conflict of interest. GRP submits that because the Subcommittee has thoroughly addressed all of the issues and arguments raised by IWAG in its Motion, there is no reason to modify the July 15, 2009 Decision and Order as requested by IWAG.

5. The first issue raised by the IWAG Motion is consideration of alternatives. IWAG disputes the Subcommittee's finding that the Applicant engaged in a reasonable alternatives analysis and argues that the Applicant failed to conduct an alternatives analysis necessary to meet the statutory criteria. The Site Evaluation Committee is required to make certain findings "after having considered available alternatives". RSA 162-H:16,IV. Clearly, the Subcommittee has met this requirement. On pages 26-28 of the July 15, 2009 Decision, the Committee provides a thorough description of the alternatives that were considered, with many cites to the record. After analyzing the information in the record, the Committee correctly reached the conclusion that the proposed site is "the preferred location among available alternatives". GRP submits that the Subcommittee more than fulfilled its statutory responsibility of considering available alternatives. With regard to the Sundstrom analysis that Ms. Linowes refers to in her motion as "showing the return on investment would not vary dramatically with fewer turbine clusters", Mr. Sundstrom himself testified that this was not a thorough analysis. As Mr. Sundstrom admitted, it was based on a "simplifying assumption" that used simplified pro rata project capital cost reductions, and was a "quick and dirty analysis" that could vary significantly if it took into account the project-specific assumptions with regard to fixed costs. Tr. Day V, pp. 150:24 to 151:3; p. 178:1-13. Moreover, there was no other evidence in the record to support reducing the Project to a 60MW or 75MW project, either of which would be a material change to the Project that likely would cause a substantial delay and jeopardize the financial viability of the Project. For these and other reasons, the Sundstrom analysis cited by IWAG, which the Subcommittee has already considered, should not lead the Subcommittee to any different conclusion than it reached in the Decision and Order.

6. The second issue IWAG raises concerns the decommissioning conditions the Subcommittee ordered as part of its review of the financial, managerial and technical capability of the Applicant. IWAG argues that no information in the record establishes the cost of decommissioning. IWAG fails to point out, however, that the agreement with Coos County requires that detailed, site-specific estimates of decommissioning costs must be provided to the County prior to the commencement of construction and every five years thereafter. *See Order, Appendix II, p. 8.* That agreement contains a comprehensive list of items to be addressed during decommissioning. Appendix III to the Order contains additional decommissioning conditions which the Subcommittee imposed as a supplement to the County agreement. GRP submits that the Subcommittee has conducted a complete review of the evidence available on this issue and met the statutory standard regarding the determination of the Applicant's adequate financial, managerial and technical capability to carry out the construction and operation of the Project.

7. The third issue IWAG raises concerns impact on property values and tourism and interconnection to the grid as part of the Subcommittee's findings on orderly development of the region. IWAG disputes the Subcommittee's finding that the Project will not injure property values in the area, disputes a similar finding on the lack of negative impact of the Project on tourism, and further argues that the Applicant should be required to submit the SIS and that the parties should have two weeks to comment on the study. GRP believes that the Subcommittee's findings on the impact of the Project on property values and tourism were correct and are supported by substantial information in the record. *Decision, pages 35-39.* For this reason, there is no reason for the Subcommittee to change those findings. GRP is filing along with this Objection a letter dated July 28, 2009 from the ISO to Noble Environmental Power that concerns the reliability impacts of the proposed Project. That letter concludes that the proposed plans to

upgrade the transmission system to accommodate this Project “will not have a significant adverse effect on the reliability for operating characteristics of the transmission facilities”. Ms. Linowes’ argument that the parties should have the opportunity to comment on this study should be rejected because the Subcommittee has no authority to alter the terms of the SIS. The SIS is a study prepared by the ISO and, while it may be of interest to this Subcommittee because of its relevance to the Project, the Subcommittee has no authority to change this study. Accordingly, giving parties the opportunity to comment on the study is unreasonable as it would serve no useful purpose. It is GRP’s understanding that the SIS is still in draft form, but that the ISO intends to post the document soon and make it available to the public.

8. The fourth issue IWAG raises is the impact on the natural environment. IWAG says the Subcommittee “proceeded with an apparent implied finding that the project will not have an unreasonable adverse effect on breeding birds, raptors, bats, or migratory birds.” IWAG Motion, section D.4, page 6. This allegation is erroneous ---the Subcommittee’s finding on this issue was not “implied”, it was explicit, as it must be. Decision, pages 54-56; Order, page 2. IWAG takes issue with the condition that gives the Subcommittee the authority to take action within its jurisdiction if it determines the Project is having an unreasonable adverse impact on any species. IWAG argues there should be an independent technical committee like that formed for the Lempster project and that additional funds should be provided for that committee. IWAG in essence argues that there ought to be an unlimited ability for parties to continually challenge the Project in the future and for the Subcommittee to make a new finding with regard to whether there is an unreasonable adverse impact on any species. As GRP argued in its Motion for Rehearing, Reconsideration and/or Clarification, absent closure on this issue and tighter restrictions on the language in this condition, the Project may not be able to be financed. GRP

believes that through the other conditions the Subcommittee has imposed and the pre- and post-construction studies that have been required, it has more than adequately addressed concerns about potential impacts on avian species. GRP therefore categorically opposes IWAG's position on this issue and recommends instead that the Subcommittee consider and implement GRP's recommendation contained in its Motion.

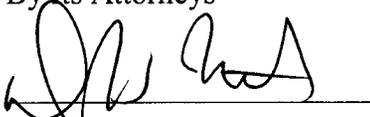
9. The final issue IWAG raises is the same conflict of interest issue that it raised a few months ago in a Motion of Industrial Wind Action Group Seeking Withdrawal of NH Fish & Game Director Normandeau from the Subcommittee made on April 16, 2009, the day before the Subcommittee began deliberations on this case, after the hearings had closed. Because IWAG's arguments on this issue are essentially the same as those that were advanced in the prior motion, they cannot support a motion for rehearing. The Subcommittee has already thoroughly and properly addressed the issue raised in the earlier motion and reiterated in IWAG's Motion for Rehearing. See Transcript, Day I of Deliberations, April 17, 2009, p.8:23 to p.21:5. From a procedural perspective, Ms. Linowes raised the conflict of interest issue too late in the proceeding and was therefore deemed to have waived any objection she had. *Appeal of Cheney*, 130 NH 589, 594 (1988). Fish and Game Executive Director Normandeau had no direct, personal or pecuniary interest in the outcome of this proceeding and therefore was not required to recuse himself. *State ex rel. Thomson v. State Board of Parole*, 115 NH 414, 422 (1975). There was no conflict that was immediate, definite and capable of demonstration. *Atherton v. Concord*, 109 NH 164, 165 (1968). For these reasons, the Applicant submits that the Subcommittee should not change its ruling on the conflict of interest issue.

Wherefore, the Applicant respectfully requests that the Subcommittee:

- A. Deny the Motion of Industrial Wind Action Group for Rehearing or Amendment;
- B. Deny the Motion of Counsel for the Public for Rehearing; and
- C. Grant such other relief as may be just and equitable.

Respectfully submitted,

Granite Reliable Power, LLC
By Its Attorneys



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(603) 223-9161
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Dated: August ¹⁹, 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.

August 19, 2009

Date

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Douglas L. Patch

July 28, 2009

Mr. Pip Decker
Noble Environmental Power
8 Railroad Avenue
Essex, CT 06426

Mr. James P. Di Luca
Northeast Utilities Service Company
107 Selden Street
Berlin, CT 06037-1651

Subject: Granite Reliable Power Windpark Proposed Plan Application ("PPA") NOBLE-09-G02, NOBLE-09-T02, NU-09-T08, NU-09-T09, NU-09-T10, NU-09-T11, NU-09-T12, and NU-09-X01

Dear Messrs. Decker and Di Luca:

On July 21, 2009, it was moved and seconded by the Reliability Committee to recommend to ISO New England Inc. ("ISO-NE") that no significant adverse impacts will result from Noble Environmental Power and Northeast Utilities System Company's ("NU's") Generator and Transmission Facilities PPAs NOBLE-09-G02, NOBLE-09-T02, NU-09-T08, NU-09-T09, NU-09-T10, NU-09-T11, NU-09-T12, and NU-09-X01 to perform the following as detailed in Mr. Pip Decker's July 2, 2009 and Mr. James Di Luca's July 1, 2009 transmittals to Mr. Don Gates, Chair Reliability Committee:

- 1) **NOBLE-09-G02** – Generator PPA proposal for the construction of thirty-three 3.00 MW Vestas wind turbine generators totaling 99.0 MW located in Coos County, NH, a collector system, collector substation and 5.8 mile 115 kV overhead line interconnecting at the NU (PSNH) Paris Substation.
- 2) **NOBLE-09-T02** – Transmission PPA for the construction of a new Granite Reliable Power collector substation and installation of a 34.5/115 kV GSU rated at 66/88/110 MVA. Also included is the installation of a 5.8 mile 115 kV line Y185 from Granite Reliable Power Collector Substation to the Paris Switching Substation located in Dummer, NH.
- 3) **NU-09-T08** – Transmission PPA for the construction of a new 115 kV Paris Switching Station with three 115 kV circuit breakers, bifurcating 115 kV line W179, providing a three-terminal point of interconnection for the proposed generator project located in Dummer, NH.
- 4) **NU-09-T09** – Transmission PPA for upgrade of the thermal capability of the existing 115 kV overhead line W179-East (Paris-Pontook-Berlin) from Paris-Dummer, NH to Berlin Substation-Berlin, NH to achieve the required summer thermal LTE rating of 101 MVA. Upgrade will result in summer thermal ratings of 114/114/114 MVA and winter thermal ratings of 133/133/133 MVA.

Mr. Pip Decker
Mr. James P. Di Luca
July 28, 2009
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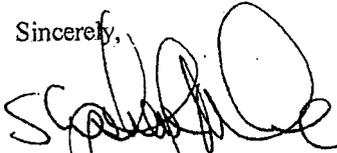
- 5) **NU-09-T10** – Transmission PPA for upgrade of the thermal capability of the existing 115 kV overhead line W179-West (Lost Nation–Paris) from Lost Nation–Northumberland, NH to Paris–Dummer, NH to achieve the required summer thermal LTE rating of 101 MVA. Upgrade will result in summer thermal ratings of 123/123/123 MVA and winter thermal ratings of 141/141/141 MVA.
- 6) **NU-09-T11** – Transmission PPA for the closing of an existing switch, 1J95, at the Littleton 115 kV Substation. This creates a three terminal line between Moore–Littleton–Whitefield Substations. Protection and controls relaying is to be added to the Littleton terminal.
- 7) **NU-09-T12** – Transmission PPA for upgrade of the thermal capability of the existing 115 kV overhead line D142 (Lost Nation–Whitefield) from Lost Nation–Northumberland, NH to Whitefield Substation–Whitefield, NH to achieve the required summer thermal LTE rating of 81 MVA. Upgrade will result in summer thermal ratings of 84/97/126 MVA and winter thermal ratings of 111/105/127 MVA.
- 8) **NU-09-X01** – Transmission PPA for the addition of automatic switching controls, based on voltage, for the existing Beebe River 115 kV capacitor banks, 3x 13.3 MVAR banks located at Beebe River–Campton, NH. This is required to mitigate post-contingency 115 kV over voltages.

The in-service date of this project is December 2010.

ISO-NE has determined pursuant to Section 1.3.9 of the ISO-NE Tariff (“ISO Tariff”) that the implementation of the Participant’s proposed plans identified in NOBLE-09-G02, NOBLE-09-T02, NU-09-T08, NU-09-T09, NU-09-T10, NU-09-T11, NU-09-T12, and NU-09-X01 will not have a significant adverse effect on the reliability or operating characteristics of the transmission facilities of Noble Environmental Power, NU, the transmission facilities of another Transmission Owner or the system of a Market Participant, based on the Project analysis as described in the report “Transient Stability System Impact Study Report for the Proposed Wind project Queue #166 Interconnecting to the 115 kV W179 Line in New Hampshire,” dated June 11, 2009, 5th Revision.

A determination under Section 1.3.9 of the ISO Tariff is limited to a review of the reliability impacts of a proposed project as submitted by a Participant and does not constitute an approval of a proposed project under any other provisions of the ISO Tariff.

Sincerely,



Stephen J. Rourke
Vice President, System Planning

cc: Proposed Plan Applications