

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

May 1, 2014

**Re: Motion of Granite Reliable Power, LLC to Amend a Certificate of Site and Facility
with Request for Expedited Relief**

Docket No. 2014-03

ORDER ON MOTIONS TO INTERVENE

Background

On March 12, 2014, Granite Reliable Power, LLC (Applicant) filed a Motion to Amend a Certificate of Site and Facility (Motion) with the New Hampshire Site Evaluation Committee (Committee). The Motion requests that the Committee amend certain conditions contained in the Certificate of Site and Facility issued in NHSEC Docket No. 2008-04, Application of Granite Reliable Power, LLC, on July 15, 2009 (Certificate).

Nature and Location of Facility and the Proposed Amendment

On July 15, 2009, the Committee granted a Certificate to the Applicant for the siting, construction and operation of a 99 MW wind powered electric generation facility consisting of 33 wind turbines on private lands located in Dixville, Erving's Location, Millsfield, Odell and the Town of Dummer in Coos County (Facility). The Facility is fully constructed and commercially operating. The Certificate imposed numerous conditions pertaining to the construction and operation of the Facility. A number of conditions were incorporated into the Certificate through a High Elevation Mitigation Settlement Agreement. Included within the High Elevation Mitigation Settlement Agreement, Section A, Paragraph 5, and incorporated in the Certificate was a condition stating:

Within the Retained Land on Mt Kelsey, only those trees necessary
for project construction will be cut. Once construction is

completed, there shall be no commercial timber harvesting in this area. After project construction the roadway shall be revegetated so that the roadbed is limited to 12 feet in width.

In its Motion, the Applicant asserts that it has complied with all conditions contained within the High Elevation Mitigation Settlement Agreement. However, the Applicant asserts that the maintenance requirements of the Facility necessitate the repeated and periodic disturbance of the revegetated areas along the roadbed to accommodate heavy construction equipment. The Applicant seeks to amend the Certificate to replace the road width condition with a Revised High Elevation Restoration Plan that will require that road widths be expanded generally to 16 feet. In addition, the Revised High Elevation Restoration Plan includes additional requirements pertaining to 1) minimization of temporary and permanent disturbances; 2) restricted access; 3) stabilization and revegetation (including requirements pertaining to grading, soil preparation, tree seedlings, and mulch for moisture retention and soil stabilization); 4) monitoring, and; 5) maintenance.

The Applicant asserts that expedited relief is necessary in order to undertake the requirements of the Revised High Elevation Restoration Plan during the growing season.

On March 13, 2014, an Order and Notice of Public Hearing issued. That Order designated April 7, 2014, as a deadline for the filing of Motions to Intervene.

On April 7, 2014, the Windaction Group (“Windaction”), also known as the Industrial Wind Action Group, filed a Petition to Intervene *Pro Se*. Windaction alleges that the Committee previously granted Windaction full intervenor status in Dockets Nos. 2008-04 and 2010-03 and that its interest in the current matter are of the same nature as interests reviewed by the Committee in those dockets. Windaction further alleges that its intervention will be in the interest of justice and will not impair the orderly and prompt conduct of the proceedings.

Specifically, Windaction states that its representative, Lisa Linowes, is sufficiently knowledgeable regarding the issues in this matter and will be of assistance to the Committee.

On April 7, 2014, the Coos County Commissioner District Three, Rick Samson, filed a request to intervene with the Committee. Mr. Samson's request is based on his status as Commissioner of the District that encompasses the real estate where the Facility is located.

The Committee did not receive any objections to the requests to intervene.

Standard

The New Hampshire Administrative Procedure Act, RSA 541-A: 32, I, sets forth circumstances under which an administrative agency must allow intervention. RSA 541-A: 32, I, requires that a Petition for intervention be granted if:

- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
- (b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

See RSA 541-A: 32, I.

Similarly, under N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11(b), the presiding office must grant a petition to intervene if:

- (1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's order of notice of the hearing, at least 3 days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests

might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

If a petitioner meets the requirements of RSA 541-A: 32, I, and N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11(b), the presiding officer must allow the petitioner to intervene. However, a presiding officer may nevertheless allow intervention even if a petitioner cannot demonstrate that his or her rights, duties, immunities or other substantial interest are affected by the proceedings “upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II.

Discussion

Windaction: In Docket No. 2008-04, Application of Granite Reliable Power, LLC, for a Certificate of Site and Facility for the Granite Reliable Power Windpark in Coos County, N.H., the Committee has already considered the interests of Windaction (the Industrial Wind Action Group) as they related to the request of the Applicant to construct and operate the Facility in dispute in this docket. See, Order Granting Petition to Intervene and Revising Procedural Schedule, Docket No. 2008-04, Application of Granite Reliable Power, LLC, for a Certificate of Site and Facility for the Granite Reliable Power Windpark in Coos County, N.H. (October 14, 2008). The Committee considered that Windaction was comprised of subsidiaries who resided throughout the United States, including neighbors to the land on which the Facility was constructed, and represented individuals and groups whose interests might be impacted by the Project. Ultimately, the Committee found that Windaction demonstrated that allowing its participation may contribute to a thorough exploration of the important issues pertaining to the construction

and operation of the Facility in dispute in this docket. Windaction asserts that its interest and reasons for intervention remain the same since the Committee granted its intervention status in 2008.

The Committee finds that Windaction intervention is warranted in this docket for the same reasons it was warranted in Docket No. 2008-04. Windaction's participation may contribute to a thorough exploration of the issues currently pending before the Committee and, therefore, will be in the interests of justice. Additionally, Windaction's participation in this docket will not impair the orderly and prompt conduct of the proceedings. Windaction shall participate fully as an intervenor.

Coos County Commissioner District Three: Coos County Commissioner Rick Samson asserts that his request to intervene should be granted because he represents the District that includes the real estate where the Facility is located. Participation of local municipalities is consistent with RSA 162-H: 16, IV (b), requiring the Committee to give due consideration to the views of municipal and regional planning agencies and municipal governing bodies with respect to the orderly development of the region. Likewise, RSA 541-A:39 requires an administrative agency to give notice to and afford all affected municipalities a reasonable opportunity to submit data, views or comments with respect to the issuance of a permit, license, or other action within its boundaries that directly affect the municipality. Commissioner Samson seeks only to intervene as an individual Commissioner and not on behalf of the County Commission. Nonetheless, as an elected representative of the county, it is important for the Committee to learn and understand the views and position of Commissioner Samson in this docket. As a Commissioner, Mr. Samson has a substantial interest that may be affected by the outcome of this proceeding. Commissioner Samson's intervention will be in the interests of justice. It will not

impair the orderly and prompt conduct of the proceedings. Commissioner Samson shall participate fully as an intervenor.

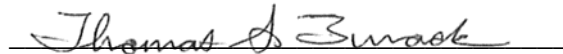
Conclusion and Order

It is therefore ordered that:

Windaction's Petition to Intervene *Pro Se* is granted. Windaction may fully participate in the proceeding.

Commissioner Samson's request to intervene is granted. Commissioner Samson may fully participate in the proceeding.

By Order of the Site Evaluation Committee, this 1st day of May, 2014.



Thomas S. Burack
Chairman and Presiding Officer
NH Site Evaluation Committee