

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2014-03**

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

**July 7, 2014**

**ORDER ON MOTION TO RETAIN CONSULTANT**

**Procedural History**

On July 15, 2009, in Docket No. 2008-04, Application of Granite Reliable Power, LLC, the New Hampshire Site Evaluation Committee (Committee) granted a Certificate of Site and Facility to Granite Reliable Power, LLC (Applicant). The Certificate authorized the Applicant to site, construct and operate 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 included a number of important conditions pertaining to the construction and operation of the Facility. A series of conditions were incorporated into the Certificate through the Committee's approval of 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.

On March 12, 2014, the Applicant filed a Motion to Amend a Certificate of Site and Facility (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 now 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 revised 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.

On April 7, 2014, the Windaction Group (“Windaction”) filed a Petition to Intervene *Pro Se*. On April 7, 2014, Coos County Commissioner, District Three, Rick Samson, filed a request to intervene with the Committee. Both motions to intervene were granted on May 1, 2014.

A Procedural Order was issued on May 14, 2014. The Procedural Order set forth a schedule with deadlines to allow the parties to conduct discovery. As part of the Procedural Order, Counsel for the Public was required to file a motion to retain experts and/or consultants on or before June 20, 2014. On June 18, 2014, Counsel for the Public filed a Motion for Leave to Retain Dr. C. William Kilpatrick and for an Order Directing the Applicant to Bear the Costs thereof. The Applicant and all parties assented to the relief sought by the Counsel for the Public.

#### **Standard of Review**

RSA 162-H: 10, V, provides that the Site Evaluation Committee and Counsel for the Public “shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter . . . .” The costs of such studies and

investigations are to be assessed to the Applicant in an amount approved by the Committee. Id. The standard of review is whether the study or investigation is reasonable and “necessary or appropriate.” Id.

What is reasonable, necessary or appropriate must be considered within the scope of the purpose of the siting statute. The statute recognizes that “it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire.” RSA 162-H: 1. In achieving this goal, the statute requires the Committee to “ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.” Id.

The Committee also bears the responsibility for monitoring the construction and operation of a facility and enforcing the terms and conditions of a Certificate. See, RSA 162-H: 4, I. In meeting its responsibilities, the Committee often needs to hear from experts or consultants to fully consider proposed amendments to the terms and conditions of a Certificate.

### **Analysis**

Counsel for the Public seeks to retain Dr. C. William Kilpatrick, a professor of biology at the University of Vermont, to provide expert analysis and opinion concerning the proposed amendment. Counsel for the Public asserts that Dr. Kilpatrick will provide useful feedback on the impact the modification of the Certificate may have on mammals and other vertebrates in the high elevation environment of Mount Kelsey. Counsel for the Public estimated that the total cost of services and expenses to be provided by Dr. Kilpatrick will be approximately \$15,000.00. Counsel for the Public reserves the right to request the Committee to order the Applicant to pay

more than \$15,000.00 if necessary. Neither the Applicant nor the other parties object to the motion.

Dr. Kilpatrick's services will assist Counsel for the Public and the Committee in ascertaining the impact that modification of the Certificate may have on Mount Kelsey's mammals and other vertebrates. The Committee also finds that the proposed cost for the consultant services is reasonable. Therefore, Counsel for the Public's motion to employ Dr. Kilpatrick will be granted to the extent that the cost to the Applicant shall not exceed \$15,000.00. Costs and expenses to the extent of \$15,000 shall be paid by the Applicant as billed by Dr. Kilpatrick. If further expenses are to be incurred, Counsel for the Public shall notify the Committee with an appropriate motion.

#### **Order**

It is therefore ordered that:

The motion of Counsel for the Public to retain Dr. C. William Kilpatrick is granted and the Applicant shall pay for the services of Dr. C. William Kilpatrick, as invoiced, in an amount not to exceed \$15,000.00.

By Order of the Site Evaluation Committee, this 7th day of July, 2014.



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