

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

_____)	
Motion of Granite Reliable Power, LLC,)	
To Amend Certificate of Site)	Docket No. 2014-03
And Facility with Request for)	
Expedited Relief)	
_____)	

**MOTION OF COUNSEL FOR THE PUBLIC
TO STRIKE TESTIMONY OF KENNETH KIMBALL**

Counsel for the Public, by his attorneys, the Office of the Attorney General, hereby moves the Committee for entry of an order striking the testimony of Kenneth D. Kimball On Behalf of Appalachian Mountain Club. In support hereof, Counsel for the Public respectfully represents as follows:

1. On May 14, 2014, the presiding officer entered the Procedural Order in this case. Under the Procedural Order, prefiled testimony supporting the movant was to be filed on or before May 22, 2014. In addition, the Procedural Order provided:

A technical session will be held on or around July 24, 2014, with the exact date to be determined by counsel to the Committee. At this technical session, the Applicant's witnesses will be available for questions. All supplemental requests for documents made at the technical session shall be satisfied within seven days after the technical session.

2. On May 22, 2014, the movant filed the testimony of Kenneth Kimball, along with others.

3. On July 16, 2014, counsel for the Committee filed and served a Notice of Technical Session and Informal Conference (Applicant Technical Session). In the notice the

Committee's counsel stated: "Any witness offering testimony on behalf of the Applicant must attend."

4. Upon information and belief, Mr. Kimball and the movant knew or should have known of the date scheduled for the technical session pursuant to the Procedural Order at or about the time the Procedural Order was entered.

5. In response to an email from the Committee's counsel, on July 15, 2014, to confirm the July 24, 2014 technical session Mr. Kimball replied "I could be available by phone, but due to other previously scheduled commitments that day and travel distance, not in person."

6. Counsel for the Public objected to Mr. Kimball's "phoning it in" due to the fact or previous notice of the date, lack of any excuse, the failure of the movant to seek concurrence or previous order of the presiding officer, and unfairness to other parties in emails to the parties.

7. The movant's response was

While GRP can compel its employees and consultants to be present at the tech session, we cannot compel Dr. Kimball's presence any more than you can. If you are unwilling to assent to his voluntary participation by phone, then you retain the option to subpoena and depose him prior to the hearing. Please let me know how you would like to proceed. Happy to catch up by phone as you'd like.

8. Counsel for the Public renewed his objections which were shared by Intervenor Industrial Wind Action Group at the July 24, 2014 technical session. Based on the objection, Counsel for the Public and IWAG declined to ask Mr. Kimball questions about his testimony.

9. Mr. Kimball's testimony should be struck from the record for his non-attendance at the technical session as required by the Procedural Order and the Notice. *See* WEBSTER'S NEW BASIC DICTIONARY, *Attend* "1. to be present (at)." There is no provision in the rules allowing for the conduct of the discovery business of the SEC by telephone. There was no agreement among the parties to proceed in this way. There was no order from the Presiding Officer authorizing a telephonic participation at this important discovery event. It is unfair and unreasonable to place the burden upon the other parties to compel the attendance of the movant's witnesses. Mr. Kimball had apparently no excuse for non-attendance; he remained on the line the entire day and could as easily have attended in person. He seems only to have lacked the desire to make the trip. The movant could have sought assent, or sought an order, or sought to change the date to a time convenient to Mr. Kimball – it did none of those things.

10. Counsel for the Public has sought the assent of the other parties. Granite Reliable Power does not assent. Industrial Wind Action Group and Rick Samson both assent.

WHEREFORE, Counsel for the Public respectfully requests that the Committee enter an order striking the testimony of Kenneth Kimball, and granting such other and further relief as may be just.

Respectfully submitted,

COUNSEL FOR THE PUBLIC

By his attorneys

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Certificate of Service

I, Peter C.L. Roth, do hereby certify that I caused an electronic copy of the foregoing to be served by e-mail upon each of the parties listed on Site Evaluation Committee's Service List.

Dated: July 25, 2014

/s/ Peter C.L. Roth
Peter C.L. Roth