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August 6, 2014

VIA FEDEX

Jane Murray
Department of Environmental Services
29 Hazen Dr., PO Box 95
Concord, NH 03302-0095

RE: **Objection of Granite Reliable Power to Counsel for the Public's Emergency Ex Parte Motion to Amend Procedural Schedule**
New Hampshire Site Evaluation Committee Docket No. 2014-03

Dear Ms. Murray:

Please find attached the Objection of Granite Reliable Power to Counsel for the Public's Emergency Ex Parte Motion to Amend Procedural Schedule. Per your instructions, my office has sent you the attached filing electronically for distribution to the Service List of Docket No. 2014-03, and has sent you the original and one hard copy via Fed-Ex.

Please contact me with any questions or comments.

Sincerely,



Nicole M. Moss
Paralegal

Enclosure

Cc: Michael J. Iacopino, Esq. (by e-mail)
Harold C. Pachios, Esq. (by e-mail)
Matthew S. Warner, Esq. (by e-mail)

**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)	
)	

**OBJECTION OF GRANITE RELIABLE POWER
TO COUNSEL FOR THE PUBLIC’S EMERGENCY
EX PARTE MOTION TO AMEND PROCEDURAL SCHEDULE**

Granite Reliable Power, LLC (“Granite”) objects to the “Emergency Ex Parte Motion to Amend Procedural Schedule” that Counsel for the Public filed yesterday, August 5, 2014. Rather than simply ask Granite and the other intervenors for a reasonable extension to pre-file his expert’s testimony, Counsel for the Public lashes out against Granite, this time with an improper ex parte, “emergency” motion that seeks again to deprive Granite of basic due process and to delay the deadline to pre-file his expert’s testimony, and the entire proceeding, indefinitely. He fails, however, to identify any way in which he has been prejudiced in what should be a straightforward proceeding focused on a single narrow issue of road widening and re-vegetation. The Motion should be denied for the following reasons:

1. First, Counsel for the Public’s effort to obtain an ex parte ruling from the Committee is wholly improper. New Hampshire law expressly forbids *ex parte* communications by agency officials assigned to render decisions in contested hearings. R.S.A. 541-A:36 (2014). Indeed, the State’s highest court has explicitly “condemn[ed] *ex parte* communication by a quasi-judicial board because they violate the basic fairness of a hearing.” *Appeal of Public Serv. Co.*, 122 N.H. 1062, 1074-75 (1982) (internal quotations omitted). Further, the rules that govern the Site Evaluation Committee (the “Committee”) also plainly bar direct or indirect *ex parte*

communications between the Committee and require that all parties be “given notice and an opportunity to participate in the communication.” SEC Site Law 202.30. Accordingly, Counsel for the Public’s Motion, if granted, would deny Granite its fundamental due process rights.

2. Second, Counsel for the Public’s labeling of his situation as an “emergency” is improper and baseless. According to Counsel for the Public, the purported “emergency” here is that his expert “is unable to complete his report and [pre-filed] testimony” within the next three business days. On its face, that cannot reasonably be viewed as an “emergency” requiring urgent attention from the Committee and the requested waiver of procedures intended to ensure due process. That is particularly so where, as is the case here, Counsel for the Public has known for nearly three months that his expert’s pre-filed testimony would be due on August 8, 2014 (Procedural Order dated May 15, 2014) and has had his expert for one month (Order on Motion to Retain Consultant dated July 7, 2014), yet did not first request a site visit or the other documents about which he now complains until a mere eight business days ago (Memorandum from M. Iacopino dated July 24, 2014). If Counsel for the Public had wanted to ensure that he had retained an expert and that that expert had visited Granite’s windpark before the deadline for his pre-filed testimony, Counsel for the Public could have made the appropriate requests for that long before July 24 (e.g., at or since the pre-hearing conference more than three months ago, on May 1, 2014). His own failure to do so does not constitute an “emergency”, let alone warrant waiver of due process protections.

3. Third, Counsel for the Public’s two asserted grounds for seeking additional time to submit his expert’s pre-filed testimony lack merit. His first asserted ground—that Dr. Kenneth Kimball of the Appalachian Mountain Club did not attend the technical session on July 24, 2014 in the manner that Counsel for the Public prefers—should be disregarded as mere

reargument of his prior punitive, baseless motion. As Granite explained in its Objection to Counsel for the Public's Motion to Strike Testimony of Dr. Kimball, which Granite had to prepare while answering and gathering documents responsive to Counsel for the Public's supplemental data requests, Dr. Kimball did attend the entire technical session telephonically and responded to questions posed both by Counsel for the Public and by Attorney Iacopino. Notably, Counsel for the Public's expert also attended that technical session, and both he and Counsel for the Public chose not to question Dr. Kimball. Delaying this proceeding in order to allow them a second opportunity to question Dr. Kimball, when they have already had, but elected not to use hours of opportunity to do so, would penalize Granite, show a lack of respect for a longtime, well-respected environmental steward, and needlessly consume public resources.

4. Counsel for the Public's second asserted ground—that Granite did not timely respond to Counsel for the Public's requests for a site visit and other documents—also lacks merit. Contrary to Counsel for the Public's assertion, Granite did timely respond to the site visit request by stating, on July 31, 2014, that Granite "is willing to host a site visit and will work with the parties to schedule a mutually convenient time." Ltr. from Granite to M. Iacopino, copy to Counsel for the Public, dated July 31, 2014. Granite anticipates that the site visit will occur in August, pending the parties' availability. That still gives ample opportunity to Counsel for the Public's expert to discuss any findings or opinions that arise out of the site visit. Specifically, Counsel for the Public's expert can present those findings or opinions (1) in Counsel for the Public's responses to Granite's data requests, which are not due until August 29, 2014, (2) at the technical session on or about September 5, 2014, (3) in any supplemental testimony that Counsel for the Public might choose to file by October 3, 2014, and (4) at an adjudicative hearing on or about October 20, 2014, if that is necessary. Further, as explained above, if Counsel for the

Public had wanted to ensure that his expert visited Granite's windpark before the deadline for his pre-filed testimony, Counsel for the Public could have made the appropriate requests for that long before he first did so on July 24, 2014. It therefore would be improper to delay the deadline for Counsel for the Public's to pre-file his expert's testimony indefinitely, until weeks after the parties visit Granite's windpark.

5. Also contrary to Counsel for the Public's assertion, Granite timely responded to Counsel for the Public's supplemental document requests arising out of the technical session on July 24, 2014, by stating that it would produce responsive documents within two business days, which it did. Ltr. from Granite to M. Iacopino, copy to Counsel for the Public, dated July 31, 2014; Ltr. from Granite to Counsel for the Public dated Aug. 4, 2014. Accordingly, at most, an extension of two additional business days (until August 12) would be reasonable, not the "2 weeks of the later [sic] to occur of the site visit and the proposed [in-person] Kimball tech session" and the "moving [of] the rest of the dates, including the hearing," that Counsel for the Public requests.

6. In summary, rather than simply asking the parties for a reasonable extension of time, Counsel for the Public inexplicably has turned directly to this Committee and has requested that it waive due process protections. He does so based on a situation that he could have avoided, that plainly is not an "emergency", and that does not prejudice him in any way since his expert still has ample opportunity to testify in part based on his site visit observations. As such, Counsel for the Public's ex parte, "emergency" motion urging, in essence, that this entire proceeding be stayed indefinitely, is improper and threatens to further delay what ought to be a straightforward proceeding focused on a single narrow issue of road widening and re-vegetation.

WHEREFORE, Granite respectfully requests that Counsel for the Public's 'Emergency Ex Parte Motion to Amend Procedural Schedule' be denied.

Respectfully submitted,

BROOKFIELD RENEWABLE POWER INC.

By 
and its Attorneys,
Preti Flaherty Beliveau & Pachios PLLP
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By: Harold C. Pachios and
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Sigmund D. Schutz (NH Bar No. 17313)
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August 6, 2014

Certificate of Service

I, Harold C. Pachios, do hereby certify that I caused the foregoing to be served upon the parties in the case by submitting it to the Committee's Clerk for electronic distribution by her to the Service List.

Dated: August 6, 2014


Harold C. Pachios