

STATE OF NEW HAMPSHIRE
BEFORE THE SITE EVALUATION COMMITTEE

Docket No. _____

Joint Petition of Granite Ridge Energy, LLC and Calpine Granite Holdings, LLC

For Approval To Transfer

Membership Interests in Granite Ridge Energy, LLC

Under RSA 162-H

October 28, 2015

**Joint Petition of Granite Ridge Energy, LLC and Calpine Granite Holdings, LLC
For Approval to Transfer Membership Interests in Granite Ridge Energy, LLC**

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- 1. Prefiled Testimony of Mauricio Del Valle on Financial Capabilities**
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STATE OF NEW HAMPSHIRE
BEFORE THE SITE EVALUATION COMMITTEE

Docket No. 15-_____

**Joint Petition by Granite Ridge Energy, LLC and Calpine Granite Holdings, LLC
For Approval to Transfer Membership Interests in Granite Ridge Energy, LLC**

I. Introduction and Overview

NOW COME Granite Ridge Energy, LLC (“Granite Ridge”) and Calpine Granite Holdings, LLC (referred to herein as “Calpine Granite” and jointly with Granite Ridge as “Petitioners”) and respectfully file this Joint Petition with the Site Evaluation Committee (“SEC” or “Committee”) requesting immediate appointment of a three-member subcommittee under RSA 162-H and expedited review and approval of the proposed transfer of ownership interests in Granite Ridge to Calpine Granite. In support of this Joint Petition, the Petitioners state as follows:

Granite Ridge owns and operates the 720-megawatt (“MW”) combined cycle natural gas-fired merchant power plant located in Londonderry, New Hampshire (the “Facility” or “Granite Ridge Energy Center”). Granite Ridge holds the original Certificate of Site and Facility (the “Certificate”) granted in May 1999 to AES Londonderry, LLC. *See* SEC Docket No. 98-02. In 2004, the SEC approved transfer of Facility ownership to lenders through voluntary foreclosure and appointment of a special purpose holding company, which was essentially an entity of convenience to own the Facility and to operate it through a contractor while a purchaser for the Facility was sought. The Facility company name was subsequently changed to Granite Ridge and a new holding company, Granite Ridge Holdings, LLC (“GR Holdings”), was formed to hold the membership interests in Granite Ridge.

This Joint Petition seeks approval of the proposed sale of GR Holdings' membership interests in Granite Ridge to Calpine Granite. In particular, GR Holdings and Calpine Granite have entered into a Purchase and Sale Agreement dated as of October 12, 2015 (the "PSA"), under which GR Holdings would sell all of its membership interests in Granite Ridge to Calpine Granite. The Facility will continue to be owned and operated by Granite Ridge. Granite Ridge will continue to hold the Certificate but Calpine Granite will hold all equity interest in Granite Ridge following the transfer. The Facility is currently operated and maintained pursuant to an Amended and Restated Operation and Maintenance Agreement ("O&M Agreement") between NAES Corporation ("NAES") and Granite Ridge. Under the PSA, Calpine Granite has the option to either extend and continue the O&M Agreement or terminate the contract and offer employment to the existing plant personnel as Calpine employees, subject to Calpine's typical employee screening practices. As of the submittal date of this Joint Petition, a final decision on whether Calpine Granite will terminate the existing O&M Agreement and extend offers to existing NAES staff working at the Facility, or continue with the O&M Agreement, has not been made. A more complete description of the transaction is addressed in Section IV below.

Transfer of GR Holdings' membership interests in Granite Ridge is expressly subject to this Committee's approval, the receipt of certain governmental approvals, including this Committee's approval, and satisfaction of certain conditions customary in transactions of this type. The Certificate and all of the Facility's existing permits and approvals will remain in place throughout the transfer of ownership process and will not be terminated by reason of this Joint Petition. Upon transfer, Calpine Granite, as owner of Granite Ridge's equity, will ensure that operation and maintenance of the Facility continues in compliance with all conditions contained in the Certificate.

Under RSA 162-H:4-a, III, the SEC Chairperson may establish a subcommittee of three (3) members, consisting of two agency members and one public member. Petitioners respectfully request that the SEC Chair appoint a three-member subcommittee for expedited review and approval of this Joint Petition.

Because time is of the essence in closing the transaction, which, under the terms of the PSA, is to be scheduled on January 4, 2016 or as soon as possible thereafter once all required approvals are obtained, the Petitioners respectfully seek expeditious review and approval of the Joint Petition by the three-member subcommittee. Petitioners will cooperate in any necessary review processes and will pay properly assessed costs and expenses.

The Towns of Londonderry and Litchfield and the City of Manchester have been provided with courtesy notices of the filing of this Joint Petition. The contact information for the Joint Petitioners' representatives is attached as Appendix A.

II. Jurisdiction and Standard of Review

RSA 162-H:5, I provides that a certificate of site and facility "shall not be transferred or assigned without approval of the committee." *See* RSA 162-H:5, I. Although the statute and rules are silent on the process for approval of a transfer of membership interests in an entity holding a certificate, as distinct from the certificate itself, here, the Certificate itself provides that: "Any change in ownership of the Applicant, AES Londonderry, LLC, without the approval of this Committee, shall render the Certificate subject to revocation" *See* Appendix B, General Condition 6. In addition, the SEC reiterated its jurisdiction to approve any change in ownership in subsequent proceedings involving the Facility. *See, e.g.,* Appendix C, *Joint Application of AES Londonderry, et al.*, Decision and Order, Docket No. 2004-01 (October 14, 2004) at 9 (requiring approval of any future changes in ownership or transfer of Certificate); *see*

also correspondence from SEC to Orr & Reno, P.A., August 28, 2008 (acknowledging that proposed change in percentage of equity ownership among current owners of Granite Ridge did not involve substantive change in ownership or transfer of Certificate but that future changes in ownership of equity interests would require approval).

Because the Facility already holds the Certificate addressing all siting, permitting, environmental, design and construction issues, this Joint Petition addresses the financial, technical and managerial capability of Calpine Granite to ensure that Granite Ridge continues to operate the Facility in accordance with the conditions of the Certificate.

The SEC has recognized this limited scope of review in previous dockets involving proposed transfer of membership interests. For example, in Docket No. 2004-01, where the SEC approved the transfer by AES Holdings Londonderry, LLC membership interests in AES Londonderry, LLC to Granite Ridge I, SPE, LLC, the following standard of review was applied:

In this case, where the Project has been substantially completed, many of the siting issues implicated by the original application for a certificate are moot. [Footnote omitted.] However, when a change in ownership is proposed, it is important for the Committee to investigate the financial, technical and managerial capability of the proposed new owner. This information is vital for the Committee and other state agencies to be able to ensure that the conditions of the certificate are continuously met. Ongoing environmental compliance and the safe operation of the facility are of the utmost concern to the Committee and the State of New Hampshire. Thus, the Committee's focus in this Docket is on the financial, technical and managerial capability of the proposed new owner of AESL.

See SEC Docket No. 2004-01, *Joint Application by AES Londonderry, LLC, et al. for Approval to Transfer Equity Interests, Decision and Order*, October 14, 2004, p. 6. The SEC reiterated this same standard of review in two subsequent dockets involving transfer of membership or equity interests in energy facilities that had already been certificated. In Docket No. 2008-01, which involved ownership of the 525 MW gas-fired power plant in Newington, New Hampshire, the SEC approved transfer of ownership interests in Newington Energy, LLC held by CED/SCS

Newington, LLC to North American Energy Alliance, LLC, under the same standard articulated in the AESL matter. *See Joint Application of Newington Energy, LLC, et al., Decision and Order Approving Transfer*, Docket No. 2008-01 (April 18, 2008), p. 4.

Most recently, the SEC approved transfer of a 75% membership interest in Granite Reliable Power, LLC held by Noble Environmental Power, LCC to Brookfield Renewable Power, Inc. before completion of construction of the certificated wind facility. The SEC applied the same standard of review in finding that “Brookfield has demonstrated by the preponderance of the evidence its financial, managerial and technical capabilities to construct and operate the Facility in accordance with the Certificate” *See Joint Application by Granite Reliable Power, LLC, et al. for Approval to Transfer Equity Interests*, Docket No. 2010-03, *Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power, LLC*, February 8, 2011, p. 7.

As described in Sections V-VII below, Calpine Granite has the financial, technical and managerial capability to continuously meet the conditions of the Certificate, thereby assuring that the Facility will continue to be operated in a financially secure, safe and environmentally compliant manner.

III. Background of Facility and Certificate

The Facility consists of: (1) the approximately 720 MW combined cycle natural gas fired power plant in the Londonderry Ecological Industrial Park; (2) a 2.9 mile electrical transmission interconnection from the plant to the North Litchfield substation; (3) a 1.3 mile electrical transmission interconnection from the plant to the Watts Brook substation; (4) a 2.7 mile lateral gas pipeline connection (owned by Liberty Utilities) to the Tennessee Gas Pipeline; and (5) a Granite Ridge - owned cooling water supply pipeline connecting the Facility to the Manchester

Wastewater Treatment Plant (“Manchester WWTP”), including a pumping station located at the Manchester WWTP.

SEC review of the project began on July 6, 1998 with submission of the application for a certificate. The SEC initiated Docket 98-02 and the review process was thorough, methodical and open to full public participation. Public Counsel, appointed by the Attorney General under RSA 162-H:9, participated throughout the proceeding. Intervenors, including the Towns of Londonderry and Litchfield, PSNH, and the Londonderry Neighborhood Coalition, also participated in the proceeding. The SEC unanimously granted the Certificate on May 25, 1999. The Certificate of Site and Facility, including the SEC Decision and Order and the attached Conditions, is attached as Appendix B.

In granting the Certificate, the SEC concluded “that the construction and operation of the proposed facility complies with the criteria of RSA 162-H.” Appendix B, p. 28. Attached to the Certificate, and approved by the SEC as part of it, are various attachments included in Appendix B relating to final approvals issued by the New Hampshire Department of Environmental Services (“NHDES”), final determinations (or “permits”) by the Air Resources Division, Water Division, and Waste Management Division, and Town conditions, among other things.

The Certificate and related agency permitting decisions rest on a thorough review of the necessary supporting information. This included the initial application, an informational hearing, supplemental filings, responses to data requests, and testimony and cross examination of witnesses and experts at an adjudicatory proceeding. The proceeding also included an agreement with the Town of Londonderry on the conditions contained in Attachment G to the Certificate, to address regulatory approvals which would have been part of the ordinary land use approval

process by the Town of Londonderry if the Town's authority had not been pre-empted by the Site Evaluation Committee process.

The SEC's integrated permitting process produced a comprehensive set of approximately 500 permit requirements and conditions applicable to the construction and operation of the Facility. The individual agency approvals included, for example, a Temporary Permit and Prevention of Significant Deterioration (PSD) air permit; terrain alteration and wetlands permit conditions; approval of the use of gray water for the cooling system and connection to the Manchester WWTP; provision for fire, safety and emergency planning; interconnections to two interstate electrical transmission lines; connection to the interstate natural gas transmission pipeline; noise regulation; and numerous other detailed conditions administered pursuant to the Certificate, which would otherwise have been regulated by the Town.

Construction of the Facility commenced on or about September 7, 2000. Provisional acceptance under its engineering, procurement and construction ("EPC") contract was achieved March 17, 2003. The Facility commenced commercial operation and began selling power into the New England NEPOOL wholesale market administered by ISO-New England, Inc. ("ISO-NE") on April 1, 2003.

In 2004, before final acceptance under the EPC contract, AES and its Lenders agreed to a consensual transfer of the Facility under UCC § 9-620. Under the §9-620 consensual foreclosure, the Facility assets, including the Certificate, were not changed, but an ownership restructuring occurred under which the equity interests in the project company, AESL, held by its immediate parent, AESL Holdings, were transferred to Granite Ridge I SPE LLC ("Granite Ridge I"). Granite Ridge I was a special purpose limited liability company organized by the Lenders, in which the Lenders would (directly or indirectly through affiliates) own membership

interests in proportion to their respective interests in the loans extended to AESL. AESL was to continue to own the Facility assets, including the Certificate, but the equity interests in AES Londonderry, LLC were to transfer to Granite Ridge I, which intended to engage NAES to complete, operate and maintain the Facility. Granite Ridge I was expected to hold the equity interests in AESL only until the Project was sold to a new permanent owner. In addition, there was to be a name change to remove the Project's identification with AES within a reasonable period of time.

On October 14, 2004, the SEC approved the proposal to transfer the AESL equity to Granite Ridge I, noting that "this Order does not change or modify any conditions of the Certificate" and reiterating the need for approval of any subsequent transfer of ownership. *See Joint Application of AES Londonderry, LLC, et al., Docket No. 2004-01, Decision and Order, October 14, 2004, at 9.* On November 5, 2004, the name of the Facility owner/operator was changed from AES Londonderry, LLC to Granite Ridge Energy, LLC.

In 2007 and 2008, after providing notice and acknowledgement from the SEC, Granite Ridge was restructured so that Granite Ridge's debt to lenders would be converted to equity, Granite Ridge I would be eliminated and ownership of Granite Ridge would be held directly by the lenders or their special purpose affiliates. *See Docket No. 2004-01, Correspondence from Orr & Reno, P.A. to SEC, August 8 and 28, 2008.* In addition, in order to facilitate refinancing and a potential auction sale of the Facility, Granite Ridge's Board formed Granite Ridge Holdings, LLC to serve as the sole member of Granite Ridge. *See id.* The Facility has been operated by the owner, through its contractors, in a safe and environmentally compliant manner and in accordance with applicable conditions of the Certificate. Any minor deviations from environmental permit condition have generally been self-reported and resolved expeditiously to

the satisfaction of permitting authorities, without penalty. Appendix D lists existing environmental permits that govern Facility operations. Careful maintenance and efficiency upgrades performed on the Facility in compliance with applicable regulatory review processes have allowed it to become one of the cleanest and most efficient combined-cycle gas-fired electrical generating facilities in the nation.

As noted above, the equity interests in Granite Ridge were expected to be held only until the Facility was sold to a new permanent owner. GR Holdings proposes to sell and Calpine Granite Holdings, LLC proposes to purchase all membership/equity interests in Granite Ridge and Calpine Granite proposes to take on ownership and operation of the Facility, as described in section IV below. Calpine Granite demonstrates herein, by preponderance of the evidence, that it has adequate financial, technical and managerial capability to ensure continued compliance with the terms and conditions of the Certificate, as described in sections V, VI and VII below.

IV. Proposed Transfer of Membership Interests

All of the membership interests of Granite Ridge are currently owned by GR Holdings, a limited liability company formed under the laws of Delaware. GR Holdings and Calpine Granite have entered into the PSA under which all of the membership interests in Granite Ridge, a limited liability company formed under the laws of Delaware, will be transferred to Calpine Granite. Granite Ridge will continue to be the record owner and operator of the Facility.

Calpine Granite is a Delaware limited liability company and, as previously stated, the purchaser under the PSA. Calpine Granite is a direct subsidiary of Calpine Power Company, which is a direct subsidiary of Calpine Corporation. A more thorough description of the corporate organization is included in the Prefiled Testimony of Mauricio Del Valle (“Del Valle Testimony”) accompanying this Joint Petition. *See* Attachment 1. This structure ensures that

support for the Facility benefits from inclusion in the fleet of 82 generating plants operated by Calpine Corporation.

The Committee recently released draft rules that address the criteria relative to findings of financial, technical and managerial capability to construct and operate energy facilities. *See* Docket No. 2014-04, Notice No. 2015-12, Final Proposal, Site 301.13. Although the proposed rules are not final, they do provide the Committee and the Petitioners with some guidance on the factors to be considered in this proceeding. For the reasons described below, the Committee's approval of the transfer of membership interests in Granite Ridge to Calpine Granite is consistent with the intent of the statute and rules and with precedent established under this Committee's decisions in the AESL, Newington and Brookfield dockets described above.

V. Financial Capability of New Owner

Calpine Granite can demonstrate by a preponderance of the evidence that it has the financial capability to own and operate the Facility in compliance with the terms originally established in the Certificate. As more particularly set forth in the Del Valle Testimony, Calpine Corporation is among the largest owners of independent power production facilities and the wholesale marketing of electricity in the United States and Canada. Through various subsidiaries, Calpine Corporation currently owns, leases, and operates natural gas-fired and renewable geothermal power plants in the United States and Canada with an aggregate generating capacity of nearly 27,000 MW. Calpine Corporation's headquarters are located in Houston, Texas. Calpine Corporation is a publicly-owned company with stock traded on the New York Stock Exchange.

Through its subsidiaries, Calpine Corporation owns the following generation facilities in the New England region:

- Calpine Fore River Energy Center, LLC (“Calpine Fore River”). Calpine Fore River owns and operates an approximately 725 MW natural gas-fired generation facility in North Weymouth, Massachusetts; and
- Westbrook Energy Center, LLC (“Westbrook”). Westbrook owns and operates an approximately 552 MW natural gas-fired facility near Westbrook, Maine.

Other Calpine Corporation subsidiaries own or control generation facilities throughout the rest of the country, including New York, the Mid-Atlantic, the Midwest, the Southeast, Texas and California. As further set forth in the Del Valle Testimony, Calpine Corporation had cash and cash equivalents of \$422 Million as of June 30, 2015. Calpine Corporation’s financial reports are filed with the U.S. Securities and Exchange Commission (“USSEC”), and can be accessed on Calpine Corporation’s website at www.calpine.com under “Investor Relations.” The Del Valle Testimony includes as attachments filings with the USSEC attached as Appendix E.

The Del Valle Testimony also details that Calpine Granite is a wholly owned subsidiary of Calpine Power Corporation, which in turn is a wholly owned subsidiary of Calpine Corporation. Calpine Granite’s acquisition of the membership interests in Granite Ridge will be financed by cash on hand and/or incremental new financing. Calpine Granite has access to sufficient committed equity to fund continued, uninterrupted Granite Ridge operations in compliance with all terms of the Certificate.

VI. Technical Capability of New Owner

Calpine Granite can also demonstrate that it has sufficient technical capability to continue, upon transfer, uninterrupted Facility operations in compliance with all conditions set forth in the Certificate. As previously noted in Section I, when ownership of AESL was transferred to Granite Ridge I, NAES was hired to operate and manage the Project under the

O&M Agreement, as approved by the SEC. *See* SEC Docket No. 2004-01, Decision and Order, October 14, 2004. Subsequent SEC-approved owner restructuring did not change the operational structure and NAES has continued to operate and maintain the Project. NAES is an independent operations and service/maintenance company contracted by the current owner. Under the PSA, Calpine Granite has the option to either extend and continue the O&M Agreement or terminate the contract and offer employment to the existing plant personnel as Calpine employees, subject to Calpine's typical employee screening practices. As of the submittal date of this Joint Petition, a final decision on whether Calpine Granite will terminate the existing O&M Agreement and extend offers to existing plant staff, or continue with the O&M Agreement, has not been made.

Independent of NAES, however, Calpine Corporation has more than three decades of experience related to the development, construction and operation of large-scale power generating facilities. Calpine Corporation employs more than 2,000 professionals and its fleet currently includes 82 operating power plants and one under construction located throughout 19 states and Canada, representing a combined total of more than nearly 27,000 megawatts of electric generating capacity. Calpine Corporation's fleet of power generation assets is almost exclusively comprised of natural gas-fired, combined-cycle power plants, similar in design and operation to Granite Ridge. Indeed, Calpine Corporation owns and operates the largest fleet of combined-cycle and combined-heat-and-power (cogeneration) electric generating facilities in North America. Therefore, Granite Ridge is ideally suited to become a member of the Calpine fleet, and Calpine Corporation is an ideal owner of such a facility, as the company has unparalleled experience in the ownership and operation of gas-fired, combined cycle generation.

Calpine Corporation is the largest operator of industrial gas combustion turbines in the U.S. and has unequalled technical experience in the operations and maintenance of Siemens

power generating equipment similar, and in some cases identical, to what is currently utilized at Granite Ridge. Calpine Corporation's fleet currently includes 35 Frame "F" or "G" class Siemens combustion turbines and 4 Siemens steam turbines. This has allowed Calpine Corporation to develop substantial in-house technical expertise in which smaller generating companies and financial players are unable or unwilling to invest. Granite Ridge utilizes Siemens 501G combustion turbine technology, which is relatively uncommon in the nation's electric power sector. Calpine Corporation, moreover, already operates two 501G combustion turbines at its Magic Valley Energy Station in Edinburg, Texas, which Calpine Corporation developed and constructed and which have been in commercial operation since 2002.

As more particularly set forth in the Prefiled Testimony of William Ferguson ("Ferguson Testimony"), attached herein as Attachment 2, to the extent that Calpine Granite elects to terminate the O&M Agreement with NAES, Calpine Granite will have more than adequate technical and operational experience to operate the Facility. Thus, Calpine Granite is fully capable of operating and maintaining the Project in compliance with market rules and government rules and permits.

VII. Managerial Capability of New Owner

Calpine Granite can demonstrate that it has adequate managerial capability to assure operation of the Facility in continuing compliance with the terms and conditions of the Certificate. As noted in Part VI above, Calpine Granite has a demonstrated record of operating a large number of power plants, including "G" technology combined cycle generating plants like the Project. As described in the Ferguson Testimony, Calpine Granite has successfully managed over 80 large electric power plants for periods ranging from a few months to a number of years. If Calpine Granite elects to terminate the O&M Agreement with NAES, Calpine Granite will

manage on-site plant operations, from human resource issues to technical matters involving the operation and maintenance of the equipment, environmental and safety matters, and the interface with ISO-NE, which has dispatch control over the facility.

Specifically, the Ferguson Testimony confirms that Calpine Corporation owns and operates power generating facilities in all the organized competitive markets throughout the U.S., including ISO-NE, NYISO, PJM, ERCOT, MISO and CAISO. Calpine Corporation participates both in “merchant” markets, i.e. restructured markets in which most if not all power sales transactions occur on a day-ahead or real-time basis, as well as bilateral markets in which Calpine Corporation operates facilities pursuant to Power Purchase Agreements with various utility or other counterparties. According to the most recent data published by Platts, a leading global provider of energy information, Calpine Corporation is currently the 6th largest electric generating company in the nation as measured by annual electrical power produced. This means that Calpine Corporation provides approximately 3 percent of the total electricity needs of the United States. Calpine Corporation has a proven track record with respect to the acquisition of power plants similar to Granite Ridge. In 2010, for example, Calpine acquired 19 power plants totaling approximately 4,500 megawatts in a \$1.6 billion transaction with Conectiv Energy. All of those units are located within the PJM market primarily in the states of Delaware, New Jersey and Pennsylvania. The Ferguson Testimony also details the members of the management team to be used if the Joint Petition is approved. Whether Calpine Corporation elects to continue with the O&M Agreement or terminate the contract and extend offers of continued employment to existing plant staff, Calpine Granite will have access to experienced and qualified personnel who know the Facility and have a proven track record of operating it in compliance with terms and conditions of the Certificate, the ISO-NE tariff, and all local, state and federal requirements.

Thus, in addition to the extensive managerial and technical expertise and experience that Calpine Corporation brings to its ownership and operation of this Facility, it will have access to similarly extensive expertise and experience provided by NAES employees that will ensure a smooth transition of ownership and continued operation in compliance with the Certificate and all applicable requirements.

The management team put together by the new owner more than meets the statutory standard of having adequate managerial capability to operate the Facility in compliance with the SEC terms and conditions. If the membership interests in Granite Ridge are transferred to Calpine Granite, its resources and expertise will preserve and ultimately enhance the value of the Facility. Calpine Granite will ensure that the Facility is managed so as to continue the Facility's good record of compliance with the Committee's terms and conditions and with all applicable permits, and will accordingly to be a good corporate citizen of New Hampshire.

VIII. Conclusion

For the reasons stated, the Petitioners respectfully request immediate appointment of a three-member subcommittee to act on behalf of the Committee, expeditious approval of the transfer of ownership of the equity interests in Granite Ridge to Calpine Granite, as described above, and for such further relief deemed just and equitable.

Respectfully submitted,

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