

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

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.**

**ORDER GRANTING PETITIONS TO INTERVENE
AND REVISING PROCEDURAL SCHEDULE**

Background

On July 15, 2008, Granite Reliable Power, LLC, (Applicant) submitted an Application for a Certificate of Site and Facility for the Granite Reliable Windpark. The Applicant seeks a Certificate of Site and Facility to construct and operate a Renewable Energy Facility in Coos County. The Renewable Energy Facility is proposed to be located in the Town of Dummer and the unincorporated places of Dixville, Ervings Location, Odell and Millsfield, all of which are in Coos County. The Applicant proposes the construction and operation of thirty three (33) wind turbines each having a nameplate capacity of three (3) MW for a total nameplate capacity of ninety-nine (99) MW, along with associated facilities.

On August 14, 2008, the Chairman of the Site Evaluation Committee (SEC) issued an order finding that the Application contained sufficient information to carry out the purposes of R.S.A. 162-H. The Chairman of the SEC, pursuant to R.S.A. 162-H:4, V, designated a Subcommittee to consider the Application.

On August 27, 2008, an Order and Notice of Public Information Hearing, Site Inspection Visit and Pre-Hearing Conference was issued. That Order designated September 18, 2008 as the deadline for the filing of petitions to intervene. The Subcommittee received motions to intervene from Clean Power Development LLC (CPD), Kathlyn J. Keene, Robert A. Keene, Jon Odell, Sonja M. Sheldon, the Appalachian Mountain Club (AMC), Wayne R. Urso, Industrial Wind Action Group (IWAG) represented by Lisa Linowes, and the New Hampshire Wind Energy Association (NHWEA) represented by Farrell S. Seiler.

On September 25, 2008, the Applicant filed a consolidated response addressing the petitions to intervene. Mr. Keene, Ms. Keene and Mr. Odell jointly, and Ms. Linowes replied to the Applicant on September 30 and October 2, 2008, respectively. Subsequently, on October 10, 2008, Ms. Keene and Ms. Linowes also filed motions seeking additional time to conduct discovery.

Standard for Intervention

The New Hampshire Administrative Procedure Act provides when an administrative agency must allow intervention. See, R.S.A. 541-A: 32, I. The statute also sets forth circumstances under which an administrative agency may allow intervention, but is not required to do so. See, R.S.A. 541-A: 32, II.

R.S.A. 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, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of the 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.

The statute also permits the presiding officer to allow intervention "at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." R.S.A. 541-A:32, II.

Similarly, New Hampshire Code of Administrative Rules, Site 202.11, requires that a petition to intervene be granted 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.

The rules also provide that the presiding officer shall grant one or more late-filed petitions to intervene upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

The Administrative Procedure Act and SEC Rules thus provide that intervention is mandatory in those cases where the party can establish that it has a right, duty, privilege,

immunity or other substantial interest that may be affected by the determination of the issues in the proceeding. The statute and the rule also provide for permissive intervention in those cases where the presiding officer determines that intervention is in the interests of justice and does not interfere with the prompt and orderly conduct of the proceeding.

Importantly, the Administrative Procedure Act and the SEC's Rules also allow the presiding officer to place limits on an intervenor's participation. See, R.S.A. 541-A: 32, III and N.H. Code of Administrative Rules, Site 202.11 (d). The presiding officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the purposes of the proceeding so long as the limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention.

Analysis of Motions to Intervene

Clean Power Development, LLC

CPD is involved in the development of renewable energy projects in New Hampshire. CPD has signed an option agreement for the purchase of land in Berlin, New Hampshire. CPD proposes to develop a biomass electric generation facility of approximately 25 MW and it holds a position in the Interconnection Study Queue maintained by the Independent System Operator- New England (ISO). CPD's position in the queue is behind the facility contemplated by the Applicant in this docket and also behind a second project contemplated by the Applicant for a 145.5 MW wind powered generation facility. CPD asserts that its facility, as well as the Applicant's facility, is intended to interconnect with the Coos County Loop transmission system. CPD claims it has a direct financial interest in the outcome of this Application as it pertains to the interconnection of renewable power facilities to the Coos County Loop, which has limited capacity to transmit electricity.

The Applicant does not object to intervention by CPD so long as CPD's role is limited to the issue of the orderly development of the region pursuant to R.S.A. 162-H: 16, IV (b). The Applicant specifically objects to CPD's intervention for the purpose of addressing transmission issues. The Applicant asserts that transmission issues are not properly before the Committee and are more appropriately addressed in other forums. The Applicant also suggests that CDP is a competitor and therefore may seek "competitively sensitive information that will create discovery disputes affecting the prompt and orderly conduct of the proceedings" and asks that, as a limited intervenor, CPD be enjoined from seeking disclosure of sensitive commercial or financial information.

There is no question that CPD has a substantial interest that may be affected by this proceeding. Such interest, moreover, is not limited to narrow issues concerning the orderly development of the region but concerns the broader issue of whether the Applicant should receive a Certificate. Therefore, CPD's petition to intervene will be granted without limitation. Of course, as is the case with any party in any proceeding, the issues a party seeks to pursue are limited by the bounds of relevance. To the extent that a dispute arises regarding

the discovery of commercially sensitive competitive information, such disputes can be addressed through the imposition of appropriate confidentiality requirements if necessary.

Sonja Sheldon and Wayne Urso

Ms. Sonja Sheldon and Mr. Wayne Urso separately filed petitions to intervene. Ms. Sheldon is a resident of the unincorporated area of Millsfield, New Hampshire and asserts that she is an abutter to the project. Mr. Urso indicates that he is a Selectman of the , unincorporated place of Millsfield. Additionally, Mr. Urso makes a separate request that every resident of the unincorporated place of Millsfield be added “to your list of Intervenors.”

The Applicant indicates that it has no objection to intervention by Ms. Sheldon, Mr. Urso or the residents of the unincorporated place of Millsfield. The Applicant suggests that these individuals be made aware of the role of public counsel in these proceedings and the ability of members of the public to make statements and present information without becoming actual intervenors in the process.

Sonja Sheldon, as an abutting property owner to the project, has a substantial interest in the outcome of these proceedings. Thus, she will be granted full intervention status. Millsfield has a very small population and the impact of a project of the proposed size will have a direct effect on its residents. Therefore, Mr. Urso’s petition to intervene will also be granted. However, it should be noted that this status applies to Mr. Urso only and that intervention is not granted to other residents of Millsfield. The deadline for filing petitions to intervene was set for September 18, 2008. Other than Ms. Sheldon and Mr. Urso, no other residents of Millsfield filed a petition to intervene and it would be presumptuous to impose the privileges or obligations of intervention on residents of Millsfield who have not sought to intervene themselves.

It appears that Ms. Sheldon and Mr. Urso have common interests in these proceedings and, therefore, they shall be combined as one party for the purposes of pre-hearing discovery, presentation of evidence and argument, and cross-examination. See, N.H. CODE OF ADMINISTRATIVE REGULATIONS, Site 202.11(d)(3).

Kathlyn Keene, Robert A. Keene and John Odell

Kathlyn Keene and Robert Keene each filed petitions to intervene in these proceedings. It appears that they share the same address in Jefferson, New Hampshire. Additionally, John Odell of Lancaster, New Hampshire filed a similar petition to intervene. The petitions to intervene filed by these three North Country residents assert that they should be granted intervenor status because they are residents of Coos County. Additionally, Mr. Odell asserts that he has engaged in hunting and fishing activities in the general area of the proposed project. Each of these individuals assert that they have a substantial interest because the proposed project would affect the environment of Coos County and have an economic impact on the county.

The Applicant objects to intervention by the Keenes and Mr. Odell, asserting that they do not possess any right, duty, privilege, immunity or other substantial interest in the outcome of these proceedings other than the interest that is generally held by the public and which is represented in these proceedings by Public Counsel. See, R.S.A. 162-H: 9.

Kathlyn Keene, Robert Keene and John Odell have not demonstrated substantial interests which would be affected by the Committee's decision on this Application. Being a resident of the county or having other experience with local boards does not equate to a substantial interest that may be affected by the outcome of the proceeding. There is nothing contained in the petitions of Mr. and Mrs. Keene or Mr. Odell which distinguish them from members of the public who are adequately represented by the appointment of Counsel for the Public by the Attorney General. See, RSA 162-H: 9. Thus, intervention by the Keenes' or Mr. Odell is not required by the Administrative Procedure Act or the Committee's rules.

However, both the Administrative Procedure Act and the Committee's rules permit intervention by any party when the presiding officer determines that "such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." See, RSA 541-A: 32, II and N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11. In this case, the interests of justice support the intervention of a discrete number of Coos County citizens, such as Kathlyn Keene, Robert Keene and John Odell. However, it should be noted that they will be required to comply strictly with the statutes and rules pertaining to proceedings before the Committee. Furthermore, to ensure that the permissive intervention of these parties will not interfere with the orderly and prompt conduct of these proceedings, their participation will be combined for all purposes; including discovery, presentation of evidence, and conduct of cross-examination. Should it transpire that the participation of Mr. and Mrs. Keene or Mr. Odell interferes with the orderly and prompt conduct of these proceedings, their intervention may be further limited. It is also conceivable that their intervention may be further combined with other parties if circumstances warrant it.

**Appalachian Mountain Club, New Hampshire Wind Energy Association
and Industrial Wind Action Group**

The Appalachian Mountain Club, the New Hampshire Wind Energy Association and the Industrial Wind Action Group have all filed petitions to intervene in these proceedings. Although they appear to represent different positions with respect to the Application, each uses a similar explanation of its asserted substantial interest in the proceedings.

Each of these organizations states that their representation of others, as well as their interest in issues that may arise during the course of these proceedings, qualify them as having a substantial interest in these proceedings. The Applicant has not objected to the petitions to intervene by either NHWEA or AMC. However, the Applicant has objected to the petition to intervene by IWAG.

Similar to the Keenes and Mr. Odell, these groups have not demonstrated rights, duties, privileges, immunities or other substantial interests which require that they be granted

intervention. Nonetheless, these organizations have shown that allowing their participation may contribute to a thorough exploration of the important issues that the SEC must consider in this case, and it has not been shown by the Applicant that there is a basis for distinguishing among the organizations in a way that would preclude the participation of one organization versus another. Thus, recognizing that the number of parties to this proceeding is reasonably limited and that the participation of various parties will be combined pursuant to the discretion afforded by RSA 541-A: 32, II and N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11(c), these parties will be granted intervention.

Like the Keenes and Mr. Odell, AMC, IWAG and NHWEA will be required to comply strictly with the SEC's rules. It should be noted as well that each of these parties' intervention may be limited or further combined when the various positions with respect to these proceedings are more clearly delineated or if a party acts in a manner that affects the orderly and prompt conduct of the hearings. To determine whether further combination is advisable, Counsel to the SEC, Mr. Iacopino, is directed to consult with the parties and report back to the Subcommittee any recommendations he might have.

Motions to Revise Procedural Schedule

With respect to the procedural schedule approved on September 26, 2008, Ms. Keene and Ms. Linowes ask that they not be subject to the October 10, 2008 deadline for discovery but that they be given until November 3, 2008 to propound data requests, i.e., the date on which Counsel for the Public must file its data requests. Among other things, Ms. Keene says that she does not have a completed Application in her possession and Ms. Linowes complains that the discovery deadlines are extremely limited.

Inasmuch as this ruling on their petitions to intervene was not issued prior to the October 10, 2008 deadline, Ms. Keene and Ms. Linowes will not be held to that date. However, Ms. Linowes and Ms. Keene failed to attend the prehearing conference in this proceeding at which other parties reached agreement on the procedural schedule, which specifically provided for an earlier filing date by intervenors other than Counsel for the Public and a later filing date by Counsel for the Public, and that later date therefore will not be applied to them. Ms. Keene and Ms. Linowes therefore will have until October 20, 2008 to propound data requests to the Applicant, and the Applicant will have until November 3, 2008 to answer such data requests. To the extent other parties wish to take advantage of the revised date for propounding data requests, they may do so.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. The petition of Clean Power Development to participate as a full intervenor is granted;
2. The petitions of Wayne Urso and Sonja Sheldon to intervene are granted, subject to the limitation that they shall be combined for the purposes of discovery, presentation of evidence and cross-examination;
3. The petitions to intervene filed by Kathlyn Keene, Robert A. Keene and John Odell are granted, but are limited in that these individuals shall be considered to be

a combined party for the purposes of discovery, presentation of evidence and cross-examination;

4. The petitions to intervene of the Appalachian Mountain Club, the New Hampshire Wind Energy Association and the Industrial Wind Action Group are granted, subject to any future orders pertaining to limitation of their participation in the proceedings; and it is

FURTHER ORDERED THAT, the procedural schedule is revised to permit parties other than Counsel for the Public to propound data requests by October 20, 2008, and to permit the Applicant to respond by November 3, 2008.

By the Site Evaluation Committee of New Hampshire, October 14, 2008.



Thomas B. Getz, Vice Chairman,
New Hampshire Site Evaluation Committee
Presiding Officer