

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**DOCKET NO. 2008-04**

**Application for Certificate of Site and Facility  
for the Granite Reliable Power Wind Park in Coos County**

**Order Granting Applicant's Motion for Protective Order  
and Approving Procedure for Treatment of Confidential,  
Commercial, or Financial Information**

On July 15, 2008, Granite Reliable Power, LLC, (Applicant) filed an Application for a Certificate of Site and Facility to develop and construct a wind powered electric generation facility in Coos County, New Hampshire (Application). Pursuant to RSA 162-H:8, V and New Hampshire Administrative Rule Site 301.02(b)(7), the Applicant filed a Statement of Assets and Liabilities as well as other relevant financial information. This information, which is designated to be Appendix 1 of the Application, was filed under seal, along with a Motion for Protective Order. The Applicant seeks a Protective Order requiring confidential treatment of the financial information. Notably, the Applicant's Motion sets forth a process to allow other parties to the proceedings in this docket access to such financial information under the terms of a Confidentiality Agreement. The Applicant's Motion also anticipates that future filings may include requests for confidential treatment and asks that similar treatment be accorded.

RSA 162-H:8, VI and New Hampshire Administrative Rule Site 301.02(b)(7) require the filing of certain relevant financial information along with an Application for a Certificate of Site and Facility. Normally, documents filed with the Committee are considered to be public records which are available for public inspection. See, New Hampshire Administrative Rule, Site 104.01; see also, RSA 91-A:4. However, certain documents and information are exempt from the Right to Know Law, RSA 91-A:5, and subject to confidential treatment, New Hampshire Administrative Rule Site 104.01(b).

"Records pertaining to internal personnel practices; confidential, commercial or financial information; . . . and other files whose disclosure would constitute an invasion of privacy" are exempt from the disclosure provisions of the Right to Know law. See, RSA 91-A:5, VI. The terms "commercial" or "financial" encompass information such as business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition. See, *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). Information is considered commercial if it relates to commerce but may also qualify as commercial even if the provider's interest in gathering, processing and reporting the

information is non-commercial. See, *Id.* at 553; citing *American Airlines, Inc. v. national Mediation Board*, 588 F.2d 863 (2<sup>nd</sup> Cir., 1978). Commercial and financial records are not necessarily *per se* exempt from public disclosure. The agency must employ a balancing test to determine whether such records should be protected and provided confidential treatment. The balancing test requires the agency to consider whether the party seeking confidential treatment has proven that disclosure is likely: “1. To impair the [agency’s] ability to obtain necessary information in the future; or 2. To cause substantial harm to the competitive position of the person from whom the information was obtained.” See, *Union Leader Corp.* at 554. In its Motion, the Applicant submits that the information for which it seeks confidential treatment is sensitive and proprietary financial information that is not normally disclosed to the public. The Applicant asserts that the electric generation market is intensely competitive and that electric generating companies normally safeguard their financial information to avoid public disclosure and to avoid an adverse effect upon the ability of the Applicant to successfully negotiate commercial transactions with third parties.

The information for which the Applicant seeks protection appears to fall within the definition of financial or commercial information which may be exempted from public inspection pursuant to RSA 91-A:5. The Applicant is not a regulated utility company and is not required to file this type of information with the Public Utilities Commission or any other state agency. See, RSA 162-H:2-4. Furthermore, public disclosure of this information may have a negative competitive impact, a circumstance in this case which outweighs any public interest that may be found. Importantly, the Applicant does not seek complete protection from disclosure but seeks a process by which the confidential information may be shared with public counsel and other parties to this proceeding.

Accordingly, a protective order is appropriate for the information that would otherwise constitute Appendix 1 of the Application. This information shall be sealed and marked confidential. One copy of this information will remain with the Sub-Committee and be maintained in a secure file separate from the public records of the proceedings in this docket. Additional copies will be made and provided to members of the Sub-Committee as necessary for them to fulfill their duties and such copies will be secured appropriately.

If a party desires to view the confidential information, said party will execute a protective agreement in the form set forth in Appendix A to this Order and forward copies of the agreement to the Applicant and the Sub-Committee. Only parties authorized by the Sub-Committee, after receipt of the executed protective agreement, shall be afforded access to the confidential information. The parties shall not make copies of such information or use the information for purposes other than the preparation for and conduct of the proceedings in this docket.

Unless otherwise ordered, the parties shall not reference the confidential information during public proceedings in this docket or at any time in public. Unless otherwise ordered, upon completion of this proceeding and any resulting appeals, the parties shall destroy any notes referencing the confidential information and return all confidential information to the Applicant. Within sixty days after the completion of this proceeding, or any resulting appeal, each party shall certify to the Applicant that said notes have been destroyed and all confidential information returned. The rights of the parties under this Order are not assignable and may not be transferred in any manner.

Unless otherwise ordered, any future requests for confidential treatment of particular information will be handled with the same procedures detailed above. A determination will be made on a case-by-case basis, however, as to whether particular information should be accorded confidential treatment. In order to assist in the prompt and orderly conduct of this proceeding, pending any determination as to the confidentiality of particular information, such information shall be treated as confidential by the parties.


It should be noted that Counsel for the Public plays a special role in the proceedings before the Site Evaluation Committee. See, RSA 162-H:9. Therefore, Counsel for the Public shall not be subject to the same protective order requirements as other parties to this proceeding. Counsel for the Public will be permitted the same access to the confidential information as the Sub-Committee itself. Counsel for the Public need not sign a non-disclosure or confidentiality agreement. However, Counsel for the Public shall not publicly disclose protected confidential information which is filed with the Sub-Committee without first obtaining authority to do so.

**IT IS HEREBY ORDERED**, that consistent with RSA 91-A, confidential treatment shall be accorded as described herein, and that all parties in this matter shall abide by the terms pertaining to the confidential information described herein; and it is

**FURTHER ORDERED**, that the determination as to confidentiality contained herein shall be subject to the ongoing authority of the Sub-Committee, on its own motion or on the motion of any party, to reconsider its determination as to the confidentiality of any particular information.

By **ORDER** of the Site Evaluation Sub-Committee, this 4th day of November, 2008.

New Hampshire Site Evaluation Committee

  
\_\_\_\_\_  
Thomas Getz, Vice Chairman  
Sub-Committee Presiding Officer

APPENDIX A

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

DOCKET NO. 2008-

APPLICATION OF GRANITE RELIABLE POWER, LLC  
FOR CERTIFICATE OF SITE AND FACILITY  
FOR GRANITE RELIABLE POWER WINDPARK  
IN COOS COUNTY

I, \_\_\_\_\_, hereby certify that I am party to the above-captioned proceeding and in connection with my interests therein, I request that I be given access to the following Confidential Information maintained by the Site Evaluation Committee: \_\_\_\_\_. I further certify that I have read the Site Evaluation Committee's protective order issued in the above-captioned matter, understand it and agree to be bound by it. I understand that this Appendix A does not authorize my access to the above Confidential Information until I have signed and delivered it to counsel for Granite Reliable Power, LLC and Noble Environmental Power, LLC and until it has been provided to the Site Evaluation Committee by said counsel.

Dated: \_\_\_\_\_

\_\_\_\_\_

Signature of Party to Docket No. 2008-