

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**DOCKET NO. 2008-04**

**Re: Application of Granite Reliable Power, LLC for a Certificate of Site and  
Facility for the Granite Reliable Power Wind Park in Coos, County**

**ORDER APPROVING PAYMENT OF CONSULTANT,  
GRANTING CONFIDENTIALITY AND  
REVISING PROCEDURAL SCHEDULE**

**December 8, 2008**

**I. Motion to Approve Consultant Fees**

On or about November 7, 2008, Counsel to the Public (Public Counsel) filed a motion for leave to retain Dr. George Mariani and Sanford Environmental Services, Inc., as consultants, and for an order directing Granite Reliable Power, LLC and Noble Environmental Power, LLC (Applicant) to bear the cost thereof. In his Motion, Public Counsel indicates that he has consulted with Dr. George Mariani, Ph.D., and Sanford Environmental Services, Inc., of Southborough, Massachusetts for the purpose of providing technical assistance in this case. Public Counsel represents that Dr. Mariani and Sanford Environmental Services are qualified to advise Public Counsel and will issue reports on issues concerning the impact of the proposed project on avian and endangered species, wetlands impacts, and habitat impacts. Public Counsel asks for approval of services up to a cost of \$50,000.00. The Applicant has not objected to this request. No intervenor or party has objected to the request.

RSA 162-H: 10, V, permits Public Counsel to employ a consultant in an amount approved by the Site Evaluation Committee, and such costs are to be paid by the applicant for a certificate of site and facility. Public Counsel has provided the Sub-Committee with a document describing the scope of services for the proposed consultants, the resumes of Dr. Mariani and each of his team members, and a capability statement for Sanford Environmental Services. Dr. Mariani and Sanford Environmental Services appear to be experienced in areas that are necessary for both Public Counsel and the Site Evaluation Committee (Committee) to carry out the purposes of RSA 162-H. Specifically, the scope of the proposed consultancy includes the impact of the project on avian and endangered species, the impact of the project on wetlands and the impact of the project on wildlife habitat. Each of these areas are implicated by the Application filed in this docket. Therefore, Granite Reliable Power, LLC is directed to pay Public Counsel's costs to retain Dr. Mariani and Sanford Environmental Services in an amount up to \$50,000.00.

## II. Motion for Confidential Treatment

On November 18, 2008 and December 4, 2008, the Applicant filed letters requesting that the Sub-Committee treat the Applicant's responses to certain data requests from Public Counsel as confidential under the Order issued by the Sub-Committee on November 4, 2008. In its November 18 2008, filing, the Applicant asks that the answers to the following data requests from public counsel remain confidential under the terms and conditions of the Committee's previous Order:

PC3-93. Please provide a breakdown of the costs of the project by component i.e., planning, consultants, design and engineering, road construction, equipment purchases, land and buildings, and by geographic location.

PC4-1. Please winds data [sic] for each meteorological tower used to determine the project's feasibility. Please include a map identifying the location of each such tower.

PC4-9. Please state the net loss expected to be reported for the year 2008 for Nobel Environmental Power, LLC. If such is not available, please provide such for the first 3 quarters of 2008.

In its December 4, 2008 filing, the Applicant requests that its answer to an oral data request from Public Counsel at a recent technical session remain confidential under the terms and conditions of the Committee's Order of November 4, 2008. The data request was:

TS 2-9. Please provide an estimate of the capacity factor for each of the proposed wind turbine strings. Please include a list of the assumptions that are used in arriving at these estimates.

The Applicant considers the answers to these data requests to consist of financial or commercial information which is exempted from public inspection pursuant to RSA 91-A:5. The Applicant does not seek complete confidential protection for the data, but asks that the data be treated confidentially within the terms of the Committee's Order of November 4, 2008. Under the Committee's Order, the parties to the proceedings can review the documents and data upon signing a non-disclosure agreement.

Records pertaining to confidential, commercial or financial information are exempt from public disclosure pursuant to RSA 91-A:5, IV. The information requested in the data requests appears to fall within the definition of commercial or financial information as that term is interpreted in Union Leader Corp. v. New Hampshire Housing Finance Authority, 142 NH 540, 553 (1997). However, such records are not exempt from public disclosure on a *per se* basis. The Committee must perform a balancing test to determine whether the records should be protected or if the public's interest in disclosure is outweighed by the Applicant's interests in protecting any confidential treatment. In this case, the data requested, if made publicly available, could affect the Applicant's competitive position in renewable energy markets. Most of the

information requested is financial information that would not normally be available to the public in the form as requested by Public Counsel. Some of the information requested includes wind data that the Applicant has developed at its own expense and capacity factor calculations based upon that data. If this information were to be made public, competitors of the Applicant could arguably gain a favorable position in the market at the expense of the Applicant. Because the public interest and the disclosure of the requested information is outweighed by the likelihood of substantial harm to the competitive position of the Applicant, the request for confidential treatment of the answers to the data requests is hereby granted. See, Union Leader Corp. v. New Hampshire Housing Finance Authority, 142 NH 540, 553-554 (1997). The answers to the data requests shall remain confidential, subject to the terms and conditions set forth in the Subcommittee's Order of November 4, 2008.

### III. Revised Procedural Schedule

On December 3, 2008, Intervenor Kathlyn Keene filed a motion seeking additional time to submit pre-filed testimony. The previously approved procedural schedule contemplated that intervenor testimony would be due on December 10, 2008. Ms. Keene reports that the technical session held on November 21, 2008 was not completed and was extended until December 19, 2008. As a result, Ms. Keene seeks an extension, until January 10, 2009, to file testimony. She reports that the Applicant agrees to an extension until January 5, 2009, that the New Hampshire Wind Energy Association opposes the extension, that Ms. Sheldon and Clean Power Development did not respond to her inquiry, and that the other intervenors, as well as Counsel for the Public, support her motion. The Applicant has filed a response to Ms. Keene's motion, which provides greater detail than represented by Ms. Keene. The Applicant correctly recognizes that a change in the deadline for the filing of testimony by Public Counsel and the intervenors will require a change in dates for other related deadlines under the existing schedule. Additionally, the Subcommittee faces the strict time constraints of RSA 162-H: 6-a.

The extension of the technical session to December 19, 2008, requires an extension of time for Public Counsel and the Intervenor to file testimony. It also requires other adjustments to the procedural schedule. The Applicant has offered a reasonable and comprehensive plan for that extension. Therefore, the remaining portions of the procedural schedule issued on September 26, 2008 shall be amended as follows:

December 19, 2008	Technical Session No. 3
January 2, 2009	Responses to data requests from Technical Session No. 3
January 5, 2009	Intervenors and Public Counsel to file pre-filed testimony
January 15, 2009	Applicant to propound data requests to Intervenor and Public Counsel

January 29, 2009	Intervenors and Public Counsel to answer data requests propounded by Applicant
February 3, 2009	Technical Session No. 4
February 10, 2009	Final State Agency Reports and conditions due
February 13, 2009	Responses to Technical Session No. 4 data requests due
February 23, 2009	Supplemental pre-filed testimony from all parties due
March 5, 2009	Final pre-hearing conference and marking of exhibits 10:00 a.m.
March 9, 2009	Commence adjudicative hearings
April 6, 2009	Final decision granting or denying certificate

The procedures set forth in the Report of Pre-Hearing Conference of September 26, 2008, shall remain in full force and effect.

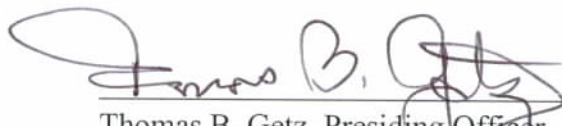
#### IV. Orders

IT IS HEREBY ORDERED that the Motion of Counsel to the Public For Leave To Retain Dr. George Mariani And Sanford Environmental Services, Inc., is GRANTED; and,

IT IS FURTHER ORDERED that the Applicant's request for confidential treatment of certain responses to data requests is GRANTED upon the terms and conditions set forth in this Order; and,

IT IS FURTHER ORDERED that the Motion of Kathlyn Keene for an enlargement of time in which to file testimony is GRANTED IN PART as set forth in this ORDER; and,

IT IS FURTHER ORDERED that the procedural schedule in this docket is amended as set forth in this ORDER.

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