

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

_____)	
RE: Application of Granite Reliable)	
Power, LLC for Certificate of site and)	Docket No. 2008-04
facility to construct up to 99 MW of wind)	
electric generation in Coos County,)	
New Hampshire and operate the same)	
_____)	

Objection of Counsel for the Public to Applicant’s Motion to Strike

Counsel for the Public, Peter C.L. Roth, by his attorneys, the Office of the Attorney General, hereby objects to the Applicant’s Contested Motion to Strike Post-hearing Submissions Made By Intervenor Kathlyn Keene and Public Counsel. Counsel for the Public objects because the documents in question are highly relevant and were timely submitted because the record had not closed. In support hereof, Counsel for the Public respectfully represents as follows:

1. The Applicant argues that the LaFrance Disciplinary Order is “totally irrelevant” to the proceeding. This is of course obviously not true. The LaFrance Disciplinary Order is relevant to the credibility of the Applicant’s witness offered for its showing of adequate managerial and technical capability for constructing and operating the project and for no unreasonable adverse impacts on the environment. The Applicant offers Mr. LaFrance as an expert with a professional engineer license. A great deal of the Applicant’s project is or will be designed by Mr. LaFrance. His work is held up by the Applicant as reassurance that the project has been designed and will be constructed in a professional and safe way and that its environmental impacts have been minimized and

mitigated to the maximum extent possible –all significantly credibility issues. In addition, a major part of the Applicant’s case is based on the implied assertion ‘we are good and qualified people, the people of New Hampshire ought to trust us.’ Mr. LaFrance, however, was disciplined for admitted “unprofessional, unethical, or dishonorable conduct” and “knowingly making or signing any false statement, certificate, or affidavit.” *See* LaFrance Discipline Order at ¶ 6; RSA 310-A:22, II (c) and (l). The fact that Mr. LaFrance was disciplined by his licensing authority for offenses that reflect on his honesty and credibility, says something about his credibility that the Sub-Committee should take into account when it evaluates the strength of his testimony that the project would be safe and not unreasonably harmful to the sensitive environment that the Applicant wishes to build it upon. If he was willing to knowingly make or sign false statements in violation of the rules of his profession and state law to advance his personal financial interests as the Order evidences, who can be certain he would not do so here?

2. The Applicant also argues that because the State of the Birds 2009 Report does not deal specifically with the project, it is also irrelevant and should be kept from the Sub-committee’s review.¹ This too is wrong. The State of the Birds 2009 report speaks of population declines in forest species and implicates energy development, *in particular wind power plant development*, as potentially contributing to the declines and most certainly as additional risks to those species. This touches directly on a central issue on which this Sub-committee must make a finding. This is large wind energy power plant which if approved by the Sub-committee will be constructed on forest land that has been indisputably identified as

¹ Arguably the same facile logic should lead to the exclusion from the record of the many documents submitted by the Applicant with its application that do not specifically reference this project.

habitat for over sixty different species of forest birds, including several already identified as threatened. There are significant gaps in the Applicant's study and assessment of how the project will affect some of these species, especially nesting and resident raptors and migrating raptors. Clearly where "an unprecedented partnership, [of] government wildlife agencies and conservation groups have come together to produce this first comprehensive analysis of the state of our nation's birds" which analysis implicates wind power plant development, it is appropriate and necessary for the Sub-Committee to take it into consideration. In doing so the Sub-Committee should ask itself whether in light of this problem so unmistakably identified by the 2009 Report, the Applicant has met its burden, or instead might the project contribute in some way to the decline of species that the report described as "sobering: bird populations in many habitats are declining—a warning signal of the failing health of our ecosystems."

3. Counsel for the Public would very much have liked to use the LaFrance Discipline Order in cross-examining Mr. LaFrance and had it been available he most certainly would have used it, hopefully to significant effect. That the LaFrance Discipline Order was not disclosed at the prehearing marking conference on March 5, 2009, is of little significance because documents used for purposes of cross-examination and impeachment are generally not required to be disclosed or pre-marked. The State of the Birds 2009 report was not published until Secretary of Interior Salazar released it on Thursday, March 19, 2009, Counsel for the Public read about it in *The Concord Monitor* on Friday, March 20, 2009, and filed a copy of it the next business day. It was thus not in existence for purposes of this proceeding on March 5, 2009.

4. The Applicant points out that after closing arguments the Chair left the record open. Perhaps this was because of the outstanding issues concerning the credibility of the Applicant's chief financial officer, Mr. Lowe, but also because public comment was still to be heard. *See* Site 202.25. It also bears notice that even as late as March 23, 2009, the Applicant submitted its own post-hearing record additions, free from the rigors of cross-examination. In the *Lempster* proceeding the Committee received and accepted post-hearing submissions as public comment. To the extent that it is necessary, Counsel for the Public hereby requests pursuant to Site 202.27 to reopen the record and admit the State of the Birds Report and the LaFrance Discipline Order.

5. Admissibility of evidence in proceedings such as this is to be granted liberally. Site 202.24(b) ("All documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.") The LaFrance Discipline Order and the State of the Birds 2009 reports are demonstrably relevant to important questions in this case and should be admitted.

6. Finally, in its prayers for relief in its motion, the Applicant requests an order prohibiting the parties and Counsel for the Public from "making any such future submissions." First, the Applicant's motion provides no facts that would support such relief. Second, the Applicant refers to no law that grants the Sub-Committee the power to order injunctive relief, and Counsel for the Public is not aware of any such law. Third, the Applicant's counsel did not seek concurrence on her request for this relief as required by the

rules and thus should be barred from seeking it in her motion. As a result, no such prospective order can be granted.

Respectfully submitted this 27^h day of March, 2009,

PETER C.L. ROTH
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By his attorneys

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Certificate of Service

I, Peter C.L. Roth, do hereby certify that I caused the foregoing to be served by electronic mail on each of the parties on the Service List.

Dated: March 27, 2009

/s/ Peter C.L. Roth
Peter C.L. Roth