

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

**DOCKET NO. 2008-04**

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

**POST-HEARING BRIEF OF THE  
APPALACHIAN MOUNTAIN CLUB**

**APRIL 6, 2009**

The Appalachian Mountain Club offers the following post-hearing comments and proposed Certificate conditions for the Granite Reliable Windpark. This brief focuses on the three areas for which the AMC submitted previous expert testimony, specifically high-elevation mitigation, decommissioning, and road construction. For brevity's sake we do not repeat AMC's previous testimony (Pre-filed Testimony of Dr. Publicover of January 5, 2009, Supplemental Testimony of Dr. Publicover of February 24, 2009, Update to Testimony of Dr. Publicover of March 13, 2009 and Closing Statement of Dr. Kimball of March 19, 2009) on why this project would have serious impacts on high-elevation ecosystems, except to stand behind the evidence that we submitted.

The Applicant has since acknowledged much of this testimony and revised their original Application with a greatly modified mitigation package (Petitioners Exhibit 48<sup>1</sup>) to resolve issues related to impacts on high-elevation ecosystems, remedies that were jointly developed through a Settlement Agreement with the AMC and NH Fish and Game Department and which AMC supports.

AMC's concerns on high-elevation mitigation, decommissioning and road construction would be resolved by incorporating in a Certificate for this project the permit conditions proposed in Appendix A, conditions that we believe are necessary and warranted by the record. AMC offers no final comments, positions, or proposed Certificate conditions on the other issues raised in this proceeding by other parties.

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<sup>1</sup> During the Public Hearing Chairman Getz ruled that the High-elevation Mitigation Settlement Agreement was to be marked as Petitioner's Exhibit 48 (transcript of 3/11/08, page 122 at line 5). However, in GRP's submission of Petitioner's Exhibits 42 through 49 dated 3/23/09, Exhibit 48 is the response to a question about a letter from USFWS. At this time we are uncertain as to whether the Settlement Agreement has been properly submitted as requested.

### **High-elevation mitigation**

As set forth in greater detail in the update to our pre-filed testimony (AMC Exhibit 15), we believe that the provisions of the Settlement Agreement reached between Granite Reliable Power, New Hampshire Fish and Game Department and AMC provide sufficient mitigation to compensate for Project impacts to high-elevation ecosystems, habitats and species, and resolves any and all concerns we have regarding the issue of high-elevation mitigation. The Applicant has since included the terms of this Settlement Agreement as a revision to its Application (Petitioners Appendix 48<sup>2</sup>).

AMC believes it is paramount that the SEC include the provisions of the Agreement as a condition of the Certificate of Site and Facility, should one be issued, to meet the requirement of NH RSA 162-H:16(c) (Findings) that requires the Committee to find that the project “*will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the **natural environment** and public health and safety.*” There is ample evidence in the record that the Project will have significant impacts on rare high-elevation ecosystems and species, and without appropriate mitigation of this magnitude the Committee would fail to meet this requirement.

### **Decommissioning**

As set forth in our closing statement on March 17, AMC believes the SEC, not the Coos County Commissioners, should make the final determination on permit conditions relative to decommissioning. We realize that for the Lempster project the decommissioning plan was arranged through an agreement with the town. That project was less than 30 MW. However, under the SEC’s authorizing statute, projects over 30 MW in size (such as this one), fall under state, not local, jurisdiction. The issues related to this project have statewide significance, and it is inappropriate for the SEC to delegate its responsibility on decommissioning to a local governing body. The SEC would clearly not delegate responsibility for negotiating the decommissioning plan for a nuclear plant to a local municipality, and there is no basis for treating this project differently. At a minimum the SEC should set the floor as to what is required for decommissioning in its certificate and then permit local governing body(s) to set more stringent decommissioning conditions if they so choose.

Our proposed conditions regarding decommissioning are based on the following principles that should form the basis for the decommissioning plan:

- Decommissioning should promote the restoration of natural vegetation communities and hydrologic patterns to the greatest extent practical, recognizing that full restoration of pre-construction topography may not be practical or even desirable.
- The mechanism for funding decommissioning must provide an ironclad guarantee that the funds will be available if and when they are needed.

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<sup>2</sup> See footnote 1.

- The decommissioning fund should be fully established no later than year 10 of project operation.
- If salvage value is included in the estimate of decommissioning cost, it must be based on conservative assumptions and reflect the fluctuations of markets for salvage materials over time.

It is AMC's position that these conditions on decommissioning are necessary to meet the requirement of NH RSA 162-H:16(a) (Findings) that requires the Committee to find that the Applicant *has the adequate **financial, technical, and managerial capability to assure construction and operation of the facility in compliance with the terms and conditions of the certificate***, and the requirement of NH RSA 162-H:16(c) (Findings) that requires the Committee to find that the project "*will not have an unreasonable adverse effect on **aesthetics, historic sites, air and water quality, the natural environment and public health and safety.***"

### **Road construction**

This project will be a very challenging construction project. Development of roads and turbine pads on steep fragile soils with numerous interspersed wetlands, seeps and shallow wet soils creates a high potential for soil erosion and environmental degradation. A high level of diligence will be required throughout the construction process by the Applicant, its contractors and subcontractors, and the NH Department of Environmental Services.

The Applicant's witness Steven LaFrance acknowledged the need for and value of the rock sandwich construction technique in his testimony at the Public Hearing (transcript of 3/11/09, page 183 line 19 through page 186 line 3).

The role of the Environmental Monitor will be critical. The monitor will be DES' "eyes on the ground" and will have the primary responsibility for ensuring that the project is constructed to the required standards. As such, it is of paramount importance that the Monitor be free from any conflict of interest arising out of their relationship to the Applicant or its contractors and subcontractors, and that he/she has the authority to take any and all necessary actions to prevent undue environmental degradation as a result of project construction.

Our proposed permit conditions in this area are intended to supplement the proposed conditions presented by the DES Wetlands and Alteration of Terrain bureaus and are supported as well by the Public Counsel's expert witness Dr. Gary Sanford (transcript of 3/17/09, page 116 line 19 through page 199 line 14). We note that proposed conditions 1, 3 and 4 are similar in form and intent to conditions imposed by Maine's Land Use Regulation Commission on TransCanada's Kibby Mountain project, the only other wind power development in the region permitted for construction above 2700 feet. It is AMC's position that these conditions on road commissioning are necessary to meet the requirement of NH RSA 162-H:16(c) (Findings) that requires the Committee to find that

the project “*will not have an unreasonable adverse effect on aesthetics, historic sites, air and **water quality, the natural environment** and public health and safety.*”

We thank the SEC for the opportunity to present these comments. We also thank Mr. Getz, Mr. Iacopino, Ms. Murray and Mr. Patnaude for their hard work and diligence during the course of this process, and for their patience and understanding toward all of the parties in this proceeding.

**APPENDIX A – APPALACHIAN MOUNTAIN CLUB PROPOSED CONDITIONS****High-elevation mitigation**

The specific requirements set forth in the Settlement Agreement between Granite Reliable Power, New Hampshire Fish and Game Department, and AMC should be included as permit conditions:

1. GRP shall secure the permanent conservation of the following lands above 2700 feet elevation plus or minus (as shown in Exhibits B1 through B5 of the Settlement Agreement) totaling approximately 1735 acres through transfer of fee title to NHFG or other appropriate state agency approved by NHFG.
  - a. Mount Kelsey, excluding a radius of 500 feet around each wind turbine tower and a width of 75 feet in both directions from the centerline of each access road (such exclusion to be referred to herein as "Retained Land") (anticipated being approximately 1281 acres).
  - b. Long Mountain (approximately 220 acres).
  - c. Muise Mountain (approximately 60 acres).
  - d. Baldhead Mountain, currently included in the wetland mitigation parcel (approximately 174 acres).
2. GRP shall enter into agreements with the title owners of the lands described in A.1, above, by which said landowners agree to convey said lands to NHFG.
3. Protection of these lands shall be governed by the following provisions:
  - a. Future development and timber harvesting shall be prohibited, unless specifically requested and approved by NHFG to meet specific habitat improvement need(s). Any other harvesting planned for these areas as of the date of the Settlement Agreement or in the future shall not occur.
  - b. Motorized recreational activities (including but not limited to snowmobiles and all-terrain vehicles) shall be prohibited.
  - c. No additional roads or structures will be allowed.
  - d. To the extent necessary, NHFG staff shall be permitted to cross adjoining lands to access the conserved areas
4. Lands above 2700 feet in the approximately 620-acre conservation parcel on Phillips Brook intended as mitigation for wetland impacts as proposed by GRP shall be governed by the same provisions as those areas listed above and be transferred through fee title to NHFG or other appropriate state agency approved by NHFG.
5. Within the Retained Land on Mount Kelsey, only those trees necessary for project construction will be cut. Once construction is completed, there shall be no

commercial timber harvesting in this area. After project construction the roadway shall be re-vegetated so that the roadbed is limited to 12 feet in width

6. If and when the Retained Land is permanently abandoned by the landowner for wind energy production, it will be conveyed to the owner of the adjoining high-elevation lands for the purpose of perpetual conservation.
7. GRP shall provide recordable surveys of the lands to be transferred, as well as marked boundaries. Note that the 2700 foot elevation will be referenced as the boundary of the target areas. However, the actual boundaries may follow straight lines centered on the 2700' elevation to facilitate survey and boundary line marking, provided that the area encompassed by these lines shall not be less than the area encompassed by the 2700 foot elevational contour.
8. GRP shall make a one time payment of \$200,000 (Two Hundred Thousand Dollars) to NHFG to be used to conduct studies of the impacts of the development on use of the area by American marten, Bicknell's thrush, and/or other wildlife species of concern, with the studies to be designed by NHFG and conducted by NHFG or other party or parties designated by NHFG.

This is not intended to substitute for the need on the part of GRP to conduct any bird or bat post-construction monitoring studies that might be required through this or any other permitting process.

9. GRP shall take commercially reasonable efforts to restrict motorized public access on all gated turbine access roads above 2700 foot elevation that are constructed for the Windpark.
10. GRP shall make a one time payment of \$750,000 (Seven Hundred and Fifty Thousand Dollars) to NHFG to secure or assist with the permanent conservation of comparable habitat outside of the project area. These funds shall be held in escrow by NHFG or its designee until expended. Funds shall be expended on one or more projects approved by NHFG after consultation with AMC. The priority for expenditure of the funds shall be for projects that secure conservation of habitat for American marten or other species of conservation concern, with a focus on high elevation spruce-fir habitat in Coos County.
11. GRP agrees that it will not construct wind turbines or associated infrastructure on Whitcomb Mountain or permit any other party to utilize its electric collection lines for wind energy facilities on Whitcomb Mountain.
12. GRP shall complete all obligations specified under Conditions 1 through 11 above prior to conducting any construction activities (including clearing of vegetation) above 2700 feet in elevation on Mount Kelsey or Dixville Peak, however GRP shall have no obligations hereunder if it does not commence such construction activities.

GRP shall have construction financing in place sufficient to fund its obligations hereunder prior to commencing such construction activities.

### **Decommissioning**

1. The decommissioning plan shall include the following elements:
  - All above-ground structures shall be removed.
  - Belowground components shall be removed to a minimum of two feet below grade. Excavations will be backfilled with material of comparable quality to the immediate surrounding area.
  - All disturbed areas shall be covered with topsoil and stabilized with erosion control mix to allow prompt revegetation by native species. Erosion control measures shall be maintained as necessary until 90% vegetation coverage is obtained.
  - All culverts and fill material shall be removed from stream channels; channels will be stabilized and restored to their natural gradient.
  - Leaks of petroleum, oils or other hazardous materials shall be remediated.
2. GRP shall submit a detailed site-specific decommissioning cost estimate to the SEC prior to commencement of any construction activity. The estimate shall be updated and submitted to the SEC every five years thereafter.
3. If the decommissioning cost estimate is based on net cost minus salvage value, then the salvage value shall be based on the median value of the lowest third of average monthly values over the previous five years.
4. On or before December 31<sup>st</sup> of years 1 through 10 of project operation, GRP shall provide funding assurance for 10% of the estimated decommissioning cost, such that full funding sufficient to carry out decommissioning is available at the end of year 10 of project operation.
5. The SEC shall approve the form of funding assurance prior to the commencement of any construction activities. The assurance shall provide an absolute guarantee that decommissioning funds are available when needed. Assurance that relies on the financial health of GRP or its parent company is not acceptable.
6. Prior to full establishment of the decommissioning fund at the end of year 10, GRP shall on an annual basis provide to the SEC proof (through insurance or other means) of its financial ability to carry out decommissioning should it be required prior to year 10.

**Road construction**

1. The rock sandwich technique must be used to maintain surface and subsurface hydrology in all areas where roads are constructed through wetlands, seepages or shallow surface or subsurface flow. Stream channel crossings may be culverted.
2. Culverts shall be designed, installed and maintained to facilitate upstream and downstream passage of the aquatic biota.
3. All disturbed areas above 2700 elevation (excluding maintained road corridors, portions of turbine pads, and other areas not to be revegetated) shall be stabilized with erosion control mix and allowed to revegetate with native forest species. Erosion control measures shall be maintained and reapplied as necessary until ninety percent (90%) vegetation cover is established. The erosion control mix shall be of a type that does not slow or impede regeneration by native trees. [Note: this condition should supersede NH Wetlands Bureau proposed condition #11 and NH Alteration of Terrain Bureau proposed condition #9 for areas above 2700 feet.]
4. DES shall review and approve the contract for and hiring of the Environmental Monitor. The Environmental Monitor may not be an employee, partner, or contracted consultant involved with the permitting of the Granite Reliable Windpark, or otherwise employed by Granite Reliable Power, its parent companies, or its contractors or subcontractors. The Environmental Monitor shall function under the direct supervision of DES.
5. The Environmental Monitor shall have the authority to stop construction activity if in their professional opinion nonconformance with permit conditions, weather conditions or other factors are causing or create an imminent risk of causing soil erosion or degradation of water quality. Construction activity shall not commence until the Environmental Monitor determines that all issues related to the stop work order have been corrected and resolved.