

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

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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)	
.)	
_____)	

COUNSEL FOR THE PUBLIC’S POST-HEARING MEMORANDUM

Counsel for the Public, Peter C.L. Roth, by his attorneys, the Office of the Attorney General, hereby submits this post-hearing memorandum.

Introduction

Counsel for the Public is not opposed to wind power development. Counsel for the Public would support this project if it is subjected to each of the conditions specified in the addendum. This project should bring a significant amount of money to Coos County, it will help preserve and protect over 1,500 acres of high elevation forestland, it will provide emissions-free energy consistent with the now national initiative to do so in a way that can be consistent with good solid environmental principles. But as recognized in New Hampshire’s Ten Year State Energy Plan, impacts on sensitive and sometimes undisturbed environments “need to be considered prior to establishment of a wind farm.” NH Energy Plan at 8-19. In order to address those concerns properly and to assure the promised energy delivery, it is imperative that every project have adequate funding, experienced and capable development, operations and management personnel, well wrought plans and complete operations

protocols. The Applicant bears the burden of proof on all of the findings that the Subcommittee must make.

The hearing, from Counsel for the Public's perspective, is not about winning or losing but instead about ensuring that the public interest will be served by showing the strengths and weaknesses of the proposal through testimony and cross-examination—understandably, the developer will focus on the strengths. While this project has considerable strengths, there are also weaknesses evident in places where it does not appear that the Applicant has met its burden. In many of those cases, however, conditions to a certificate may be able to remedy the problems and provide the public with the assurance that everything possible has been done to protect the environment while at the same time providing for the development of a needed source of renewable energy and be a net benefit to the people of the North Country and the entire State.

Set forth below are Counsel for the Public's summaries of the findings that must be made and suggestions for conditions. Attached are Counsel for the Public's proposed conditions.

1. Adequate financial capability

It is undisputed that the Applicant has insufficient cash in its possession or in its parent entity to construct the project. It is also undisputed that the Applicant does not have loans or equity commitments lined up to finance the construction and operation of the project. Clearly the Applicant has in the past financed projects of this size or greater and has demonstrated significant financial capability for those projects in the past. The Applicant has

not met its burden of showing that it possesses the requisite financial capability *now*, though it has in the past, and may still do so in the future. It is therefore a question of law for the Sub-committee to decide whether it can replace a required pre-certificate finding with issuance of a certificate subject to a “condition” along the lines of what was proposed by the Applicant.¹ At a minimum, conditions on this should include an opportunity for the parties to review and challenge a proposed financing package when such becomes available, a prohibition on construction activities before financing, and bonding.

2. Adequate managerial and technical capability

The Applicant is a relatively inexperienced developer and operator of wind generated power plants and has no experience constructing and operating a facility in an environment like this one. The Altona incident and the number of unpaid bills from its New York projects are also troubling. The project’s engineer is also inexperienced with constructing wind farms, construction at high elevation, and construction of a project of this scale. Although the Applicant does not appear to have met its evidentiary burden of showing that it has adequate managerial and technical capability to construct and operate the project, if implemented, certain operating conditions that can sunset as the project progresses and succeeds, may resolve the question favorably.

¹ The Applicant’s claim that the Committee has never required a “real time” showing of adequate financial capability is not accurate. There are no published orders where the Committee has been faced with circumstances like these where neither the applicant nor its parent have sufficient financial resources on the day of the issuance of the certificate and were simply being counted on to go out in the market and raise it from unidentified sources.

3. Orderly development of the region

This is not an area within the scope of Counsel for the Public's statutory jurisdiction and while his cross-examination of the witnesses is appropriate to maintain the integrity of the process, he does not take a position on this factor. The certificate should, however, be conditioned upon there being a complete system impact analysis and an unambiguous "green light" from ISO New England.

4. Unreasonable adverse effect on aesthetics

While the project will have significant adverse impacts on the quality of several important scenic resources in the North Country, e.g. Scenic Route 26, 13-Mile Woods, Dummer, Philips and Millsfield Ponds, and Lake Umbagog, to some extent these impacts can be mitigated with conditions to require the project to install and maintain sufficient natural visual barriers, as well as prohibit lighting (other than required by FAA) and signage of any kind on the turbines themselves. As mitigation for the unavoidable visual impacts, the Applicant should be directed to develop a visitor center and several kiosks with information about the project on roadside areas where the project may be visible, as well as contribute to Coos County and DRED for eco-tourism development focused on the project and the area's wildlife resources. In addition, the conditions can require the road system to be properly screened and actively re-vegetated with appropriate native species, to 12 feet width to reduce its visual impact.

5. Unreasonable adverse impacts on the natural environment

The project will have a significant adverse impact on the natural environment. There is as yet insufficient information to determine whether that impact will be unreasonable and the Applicant has therefore not yet met its burden of proof on this issue. Nevertheless, conditions that can be accomplished prior to construction and afterwards can ameliorate this deficiency.

Prudence and best practices indicate that prior to constructing a wind power plant in a location where raptors are known to reside that a careful study be conducted to determine the abundance of those birds on and migrating over the project site. The Applicant should be directed to conduct a full and adequate raptor survey and present such to the Sub-committee and the parties prior to commencing any construction or clearing on the ridgelines. In addition, the Applicant should be directed to review its engineering plans to determine all additional wetlands avoidances that can be achieved without undue expense or delay by moving or reoriented roads and turbine pads. The Applicant should also be required by condition to implement a storm water system maintenance plan. The Applicant should be required to propose and implement a roadside restoration program using appropriate and native species to actively re-vegetate cleared areas, and roadside cuts and fills not required for actual project operation. Finally, the Applicant should be directed by condition to identify and implement wetlands restorations to make up for the thirteen acres of lost wetlands. Additional and more detailed conditions are set forth in the attached addendum.

6. Public health and safety

This is not an area within the scope of Counsel for the Public's statutory jurisdiction and while his cross-examination of the Applicant's witnesses is appropriate to maintain the integrity of the process, he does not take a position on this factor. In the public interest, however, the certificate should be conditioned upon there being appropriate security, fire and emergency response plans and equipment.

7. Consistent with state energy policy

State energy policy with respect to siting wind generating power plants is not developed. To the extent that state energy policy supports the development of additional sources of energy and diversification, the project is consistent with that policy.

Respectfully submitted this 10th day of April, 2009,

PETER C.L. ROTH
COUNSEL FOR THE PUBLIC
By his attorneys

KELLY A. AYOTTE
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ADDENDUM

Counsel for the Public's Proposed Conditions

A. Financial and managerial capability

1. Prior to the commencement of any construction, and not later than December 31, 2010, the Applicant must demonstrate that it has obtained funds in the form of committed financing, including equity contributions, for both construction and term, from reputable institutions, in the amount of no less than \$300,000,000.

2. That the terms and documentation concerning such funding shall be provided to the Committee and parties who will be provided 10 days to request a hearing before the Sub-committee, stating good cause for such.

3. If the Applicant needs to commence construction activities of a substantial nature prior to the end of 2010, and has not yet obtained complete project financing as set forth above, the Applicant may commence construction at areas below 2500' elevation provided that it posts with the Sub-committee adequate financial assurance in the form of a letter of credit or surety bond to cover the complete cost of restoring any areas disturbed.

4. Applicant shall require each contractor and subcontractor to be bonded.

5. Applicant shall file with the Sub-committee a detailed construction sequencing plan.

6. The Applicant shall engage a general contractor for the construction of the project, and not attempt to serve as its own general contractor, such general contractor shall be of a reputable firm with significant experience in the scope and type of construction, including high elevation ridge line construction.

7. Applicant shall prepare in final form a complete decommissioning plan and submit such to the Sub-committee for review and incorporation as a condition to the certificate. The decommissioning plan shall include the following: sufficient financial assurance for the removal of all turbines, electrical structures, ridgeline roads and pads, and restoration of such areas with re-grading and installation of appropriate native vegetation; such financial assurance shall be available immediately without any reduction values for the scrap or resale value of project components unless such values are evidenced by current appraisals or purchase offers from qualified and reputable parties.

8. Prior to the commencement of construction Applicant shall enter into a power purchase agreement and provide copies thereof to the Sub-committee and Counsel for the Public.

9. Applicant shall ensure that a full time operations manager with the authority and ability to control operation of the power plant be present in Coos County at all times and on call within no more than 60 minutes to respond to any problems with the power plant.

B. Safety, access and emergency response

10. Applicant shall file with the Sub-committee a detailed emergency response plan prior to the commencement of construction.

11. Applicant shall file with the Sub-committee a detailed storm water system maintenance plan certified by a licensed professional engineer prior to the commencement of commercial operations.

12. Applicant shall file with the Sub-committee a detailed safety and access plan providing, among other things, gate access protocols, and warning signs no less than 1,500 feet from any turbine location prior to the commencement of construction.

13. Prior to the commencement of construction, Applicant shall purchase for the Coos County Commission two forest fire fighting apparatus, and shall construct, equip, and provide services and maintenance for, a fire station to be located near the intersection of Dummer Pond Road and Rt. 110 or Rt. 16. Applicant shall provide to all responding fire fighters keys or security codes for all gates on the project site.

C. Visual impacts and orderly development of the region

14. In cooperation with DRED, the Town of Errol, and the Coos County Commission, Applicant shall construct a visitor's center in Errol, New Hampshire and kiosks at no fewer than three (3) view points along Route 26 or Route 16, at which it shall provide information concerning wind power and the project within one year of the commencement of commercial operations. The Applicant shall guide interpretive tours of the project site for visitors, students, and officials. The Applicant shall maintain these facilities and services for the duration of the project's operation.

15. Applicant shall provide funding in the amount of \$200,000 to DRED for the purpose of promoting eco-tourism in the project area.

16. Prior to the commencement of any construction, Applicant shall provide the Sub-committee a completed system impact study from ISO NE indicating no significant impacts to the system from the project interconnection.

17. Upon completion of construction, Applicant shall install and maintain vegetative screens along sightlines of the project along Dummer Pond and Philips Pond, and project roads, and shall study the feasibility of installing vegetative screens to obstruct views of the project when seen from Rt. 16.

18. Except in immediate vicinity of the turbines themselves, and for safety reasons during construction, the Applicant shall not post any of its leaseholds against hunting or trapping.

19. No less than 120 days prior to the commencement of construction, Applicant shall file with the Sub-committee a detailed road and clearing restoration plan certified by qualified licensed professionals, which shall specify the planting of native species and restoration of top soil, and which shall reduce turbine access road to twelve feet in width, within one year of the completion of construction of any particular project site.

20. Applicant shall implement and maintain the restoration plan for the duration of the project's operation.

D. Environmental impacts

21. Prior to the commencement of any construction, Applicant shall conduct a resident raptor survey, a breeding bird population benchmark study, and a migrating raptor survey, based upon scopes of work approved by a technical advisory committee.

22. Beginning two years after the commencement of commercial operations, and continuing for two consecutive years, and lasting in each year from spring migration through the end of fall migration in early December, the TAC shall conduct a post-construction mortality study, funded by the Applicant.

23. To ensure compliance with environmental permits and laws during all of the construction phases of the project, Applicant shall employ an independent licensed environmental consultant who shall serve as environmental monitor and who shall have the power to order the cessation of construction activities.

24. Applicant shall not conduct any clearing or road construction activities above 2,500 feet elevation on Mt. Kelsey, Owlhead or Dixville Peak between April 1 and August 1.

25. Prior to commencement of construction, Applicant shall organize a technical advisory committee including members of the following: Applicant, US F&W, ACE, NHF&G, AMC, Coos County Commission, Town of Dummer, PSNH, and the Office of the Attorney General. The TAC shall design a scope of work for the pre-construction raptor and breeding bird population studies and a post-construction avian mortality study. Applicant shall fund the TAC's activities, including the employment of consultants in an amount not to exceed \$300,000.

26. Prior to the commencement of construction, Applicant shall retain the services of a professional engineer with experience in designing and constructing a project of this type and scale and in high elevation locations to review the plans. Said engineer shall provide a comment and recommendation to the Applicant and the Sub-committee concerning: (i) any opportunities to relocate or reorient project components to avoid wetlands, vernal pools or other significant environmental or geologic features; (ii) the safety and stability of the design of the roads and turbine pads; and (iii) the functionality of the storm water system. The Sub-committee, upon reviewing such a comment and report may order additional conditions.

27. The Applicant shall provide for the subterranean installation of any electrical collection facilities located within 1000 feet of any turbine.

28. Applicant shall employ a certified wetlands scientist to (i) design and implement plans to restore 10 acres of already impacted wetlands in areas that will not be impacted by future logging activities; (ii) prepare a detailed plan to reconstruct vernal pools

and monitor their success for a period of no less than 5 years from the date of successful establishment of the created pools in accordance with clearly delineated detailed criteria; and (iii) conduct a baseline water quality study for the project area covering four contiguous pre-construction seasons.

29. Applicant shall modify its agreement with NHF&G and AMC to provide that payment of all moneys owed to them under the agreement and all deeds required to be delivered thereunder, shall be paid and delivered to NHF&G the earlier of 180 days after the issuance of a certificate, or the date of the commencement of any construction activities.

30. The Sub-committee shall retain jurisdiction until all the studies are completed and additional information submitted to order additional conditions, including restrictions on operations or construction.