



Industrial Wind Action Group

facts, analysis, exposure of wind energy's real impacts

April 16, 2009

Thomas B. Getz, Chairman
New Hampshire Site Evaluation Committee
Sub-committee Chairman
c/o New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

Re: Docket No. 2008-04 Application of Granite Reliable Power, LLC

Dear Chairman Getz:

Industrial Wind Action Group respectfully submits this motion seeking the withdrawal of Director Glenn Normandeau for the reasons detailed.

I have contacted the other parties to determine their position on this motion. The responses I received thus far are as follows:

Jon Odell, Kathlyn Keene, Robert Keene: Support
NH&G and AMC: Oppose

If you have any questions, please do not hesitate to contact me by phone at 603-838-6588 or e-mail at llinowes@windaction.org.

Sincerely,

Lisa Linowes
for the Industrial Wind Action Group

cc: Service List for Docket 2008-04

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

RE: Application of Granite Reliable Power, LLC)
for Certificate of site and facility to construct up)
to 99 MW of wind electric generation in Coos)
County, New Hampshire and operate the same.)

**MOTION OF INDUSTRIAL WIND ACTION GROUP SEEKING WITHDRAWAL OF NH FISH &
GAME DIRECTOR NORMANDEAU FROM THE SUBCOMMITTEE**

Industrial Wind Action Group (“IWA”) hereby moves to have NH Fish & Game Director Glenn Normandeau removed from the Site Evaluation Subcommittee (“Committee”) and barred from participating in the deliberations or any deciding votes taken by the Committee in reference the Granite Reliable Power wind energy facility proposed for Coos County. IWA’s reasons in support of this motion are stated as follows:

1. Under RSA 162-H:1 the legislature declared that the construction and operation of energy facilities in the State should be treated as “a significant aspect of land-use planning”. In this regard, the Committee sits as a land use board and we argue is subject to RSA 673:14 Disqualification of Member.
2. SEC Rule Site 202.03 permits for the withdrawal of a Committee Member for good cause. Site 202.03 states that ‘good cause’ exists if “a direct interest in the outcome of the proceeding, including but not limited to a financial or family relationship within the third degree of relationship with any party or representative”
3. In *Winslow v. Town of Holderness*, 125 N.H. 714 (1984), the Supreme Court found that the member of a land use board acting in quasi-judicial capacity “must be disqualified if he or she is ‘not indifferent’ to the outcome of the application”¹
4. If a Member does not withdraw him or herself, any final decisions by the Committee could be ruled invalid since, according to Winslow, “it was impossible to estimate the influence one member might have on his associates.” This is the case, regardless of how the members vote on the application.
5. Director Normandeau is Executive Director of the New Hampshire Fish and Game (NHF&G).
6. Employees of NHF&G who ultimately serve at the Director’s pleasure filed testimony before the Committee in this matter.

¹ From "Harmonious Land Use Regulation: Are We All Singing in the Same Key", NHMA Law Lecture #1, Fall 1997, Walter Mitchell and Timothy Bates .

7. Employees of NHF&G have negotiated a mitigation settlement with the Applicant totaling nearly \$1 million dollars in cash which, although earmarked for specific purposes, is money Director Normandeau and his department will control.

8. In addition to a cash outlay, NHF&G will be taking fee title of certain lands surrounding Mount Kelsey as well as acreage on Long Mountain and Muisse Mountain totaling 1735 acres.

9. IWA asserts that Director Normandeau's position on this Application cannot be separated from the benefits derived from the mitigation settlement reached by his employees. These benefits notwithstanding, the relationship Director Normandeau holds with his employees cannot be ignored. While Director Normandeau can argue that he is not impacted by the situation, the appearance of conflict exists. Further, regardless of how Director Normandeau votes, questions will still linger about whether the situation caused him to vote one way or the other.

10. IWA recognizes that no other member of the Committee is subject to conflict questions in this same way.

IWA's motion is, in no way, intended as an affront or attack on Director Normandeau and his efforts in these proceedings. Rather, we merely seek a fair, judicial process and given the Director's special relationship with other parties in this Docket, we find it necessary to file this motion.

Therefore, we respectfully ask for the following consideration:

- A. Director Normandeau immediately withdraw himself from the proceedings;
- B. If Director Normandeau does not agree to withdraw, the Committee will vote in the affirmative to ensure his withdrawal.
- C. Grant such further relief as it deems equitable and appropriate.

Dated this day of April 16, 2009

INDUSTRIAL WIND ACTION GROUP

By:



Lisa Linowes

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cc: Parties to Docket 2008-04