



Industrial Wind Action Group

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

April 27, 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 requesting that deliberations before the SEC be suspended and the record for Docket 2008-04 be re-opened.

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
Granite Reliable Power: 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 TO SUSPEND SEC
DELIBERATIONS AND REOPEN THE PUBLIC RECORD**

Industrial Wind Action Group (“IWA”) hereby moves to suspend the deliberations of the Site Evaluation Subcommittee (“Committee”) and to reopen the public record pursuant to Rule Site 202.27. During the April 20, 2009 deliberative session, the Committee made three requests for additional information to be added to the record. The requests, directed at Granite Reliable Power (the “Applicant”) and New Hampshire Fish and Game (“NHF&G”), and after the official record was closed, were issued with no opportunity granted other parties to participate in the communication as required under RSA 541-A:36 and Site 202.30. IWA’s reasons in support of this motion are stated as follows:

1. At the close of the proceedings on April 2, 2009, the Presiding Officer confirmed with the parties that all record requests had been filled. The record for Docket 2008-04 was subsequently closed with no party requesting it remain open to “accommodate the filing of evidence, exhibits, or arguments not available at the hearing” (Site 202.26). Deliberations of the Committee were set to begin on August 17, 2009.

2. During the April 20, 2009 deliberative session, the Committee made three requests for additional information to be added to the record. These were: (a) Identification of the root cause and analysis of the Altona, NY turbine collapse; (b) Status of filings submitted to the FAA; (c) Onsite assessment of mitigation lands identified in the High Elevation Mitigation Agreement. The requests for information were made directly to the Applicant and NHF&G with no opportunity for any of the other parties to participate in the communication. A deadline for responses was not established but presumed to be as soon as possible.

3. Pursuant to Rule Site 202.26(a) and (b), the only method by which addition information could be accepted is through the re-opening of the record. Since the Presiding Officer asked that the requests be fulfilled, it is reasonable to believe the information requested was “necessary for a full consideration of the issues presented at the hearing” per Site 202.27 (b).

4. The parties were not all present at the April 20, 2009 session. The parties had a reasonable expectation that no such *ex parte* communication would occur. Those that were present may have witnessed the communications between the Committee and certain parties but were provided no opportunity to participate.

5. Specific to the requests made of the Applicant and NHF&G, we offer these facts:

a. **Root cause of Altona turbine collapse.** Committee member Harrington requested the Applicant inform the Committee on the root cause of the Altona, NY wind turbine collapse. Mr. Harrington asserted he was unwilling to take a position on whether the project met the burden of no unreasonable adverse effect on public health and safety without this additional information. Attorney Iacopino confirmed that no explanation for the turbine collapse was in the record. We note that Mr. Harrington had an opportunity to request this information during the hearings (See: TR 3/10/09, Pg 99) Given the material nature of this information it is appropriate that the parties be granted an opportunity to examine the Applicant's response under cross-examination.

b. **FAA Filings and Petitioner Exhibit 43.** In its March 23, 2009 letter to the Committee, the Applicant supplied Petitioner Exhibit 43 explaining the discrepancy in turbine heights filed with the FAA. A revised Petitioner Exhibit 43 was later submitted to the Committee (March 27, 2009). Both exhibits were received before April 2, 2009 and prior to the record being closed. No additional data requests were made by the Committee on this topic until April 20 when the Presiding Officer requested a status of the FAA filings.

In its responsive letter to the Committee dated April 27, the Applicant asserted the revised FAA filings were submitted to the FAA. The Applicant then added that "new 'No Net Hazard' determinations" will be issued by the FAA for all 33 proposed turbines by the end of May, 2009". No proof was provided by the Applicant to substantiate the claim that "No Net Hazard determinations" would be issued. The communication between the Committee and the Applicant after the record was closed expressly prohibited any opportunity for other parties to cross-examine the Applicant on its assertions. If the Applicant is certain "No Net Hazard" determinations are forthcoming, IWA questions why the FAA has not issued its findings already rather than branding the study as "In Progress".

c. **Assessment of Mitigation Lands.** Committee member Kent requested that the NHF&G provide an assessment of the mitigation lands detailed in the High Elevation Mitigation Agreement. The assessment was to be prepared following an onsite visit to the lands in question.

Cross-examination of AMC's David Publicover on March 13, 2009 revealed that no representatives from NHF&G or AMC visited the mitigation sites to validate whether the habitat was comparable to that which would be impacted by the Project.

The mitigation land is a significant component of the High Elevation Mitigation Agreement and IWA fully supports Dr. Kent's request to see onsite validation of the habitat. If this new information is to be entered into the record, all parties should be afforded an opportunity to participate in the communication and, if necessary, cross-examine NHF&G on the specifics of how their assessment was made and the conclusions drawn by NHF&G.

Given the provisions of the High Elevation Mitigation Agreement agreed to by NHF&G, IWA is particularly sensitive to NHF&G being the sole entity providing this information without any opportunity for cross-examination by the other parties. When the Department entered into the agreement with the Applicant it agreed, with AMC, to "file supplemental pre-filed testimony and/or oral testimony expressing their belief that the provisions of this agreement provide sufficient mitigation to compensate for project impacts to high elevation ecosystems, habitats and species, and resolve any and all concerns regarding the issue of mitigation". It also agreed to "not oppose the Windpark, including GRP's applications to the SEC and USACE..." (See Provisions B2 and B5 of the Agreement). To ask NHF&G to now provide an assessment of the habitats after having signed the agreement creates a conflict for NHF&G. And for the Committee to accept this information after the record has already been closed with no opportunity for the other parties to participate in the process would be a violation of RSA 541-A:36 and Site 202.30.

Given the level of concern this project raises regarding impacts to wildlife and the natural environment, areas directly under the purview of NHF&G, IWA remains concerned that Director Normandeau's participation potentially jeopardizes any decision taken by the Committee. Despite assertions of a "firewall" between NHF&G personnel and Mr. Normandeau, in fact, *ex parte* communication has occurred regarding this issue of mitigation land (See the attached e-mails). Although the Committee denied IWA's motion, we believe it necessary to inform the Committee of this communication.

IWA therefore requests immediate consideration of this motion by the Committee, that the deliberations be suspended on this application and that further actions be taken as the Committee deems necessary and prudent to remove *ex parte* information from the deliberations. Further, we respectfully ask that the record be re-opened prior to continuation of the deliberations to permit all parties an opportunity to participate should additional information

be added to the record. All new information received by the Committee should be subject to cross-examination by the parties.

Thank you for your attention to the important matter.

Dated this day of April 27, 2009

INDUSTRIAL WIND ACTION GROUP

By:

A handwritten signature in black ink, appearing to read 'Lisa Linowes', written over a horizontal line.

Lisa Linowes

Industrial Wind Action Group
286 Parker Hill Road
Lyman, NH 03585
(603) 838-6588

cc: Parties to Docket 2008-04

Steve, thank you for your response.

I am concerned your inclusion of Director Normandeau on this e-mail is a violation of ex parte communication. To my knowledge, these proceedings do not allow for communications of this nature between intervenors (including you) and the committee members, nor would it be appropriate for you to address this with the director -- he's asserted he's erected a firewall in the department.

I've included Mike Iacopino on this e-mail so he can provide guidance.

However, to your point, does the Phillips Brooks area include Kelsey and the other mitigation sites?

Thank you.
--Lisa

----- Original Message -----

From: [Steven J Weber](mailto:Steven.J.Weber@nh.gov)

To: [Lisa Linowes](mailto:Lisa.Linowes@nh.gov)

Cc: barbara@berlindailysun.com ; [Edith Tucker](mailto:Edith.Tucker@nh.gov) ; Richard.A.Roach@usace.army.mil ; [Vernon Lang@fws.gov](mailto:Vernon.Lang@fws.gov) ; wstaats@nhfgd.org ; [Ken Kimball](mailto:Ken.Kimball@nh.gov) ; [Michael Bartlett](mailto:Michael.Bartlett@nh.gov) ; [Carol Foss](mailto:Carol.Foss@nh.gov) ; [Laura Deming](mailto:Laura.Deming@nh.gov) ; Chris416jensen@aol.com ; [Kathy Keene](mailto:Kathy.Keene@nh.gov) ; [Brian Ruth](mailto:Brian.Ruth@nh.gov) ; [B Nelson](mailto:B.Nelson@nh.gov) ; [Normandeau, Glenn](mailto:Normandeau.Glenn@nh.gov) ; [Mulholland, Evan](mailto:Mulholland.Evan@nh.gov)

Sent: Tuesday, April 21, 2009 3:57 PM

Subject: RE: Onsite visit of GRP mitigation lands

Hi Lisa,

We are working on a response to the SEC regarding the on the ground recon of the mitigation parcels on the Western ridge, and have committed to getting a response back to the SEC prior to their next meeting on the 29th. Given the timeframe and what we might learn from going on the ground between now and next Wednesday, I'm not sure if we are going to get there or not. Regarding the comment made by Director Normandeau at last Friday's SEC meeting, he was referring to the lower elevation lands within the Phillips Brook tract that they visited on the field trip last September. At that time, they did not visit the turbine sites, or the mitigation parcels on the western ridge. I was not at the hearing when the comment was made, but it is my understanding Director Normandeau did not imply he was talking about Mt. Kelsey when making the comment, and the quote below appears accurate, as it says nothing of Mt. Kelsey.

Steve

Steven J. Weber
Chief of Wildlife
NH Fish and Game
11 Hazen Dr.
Concord, NH 03301
603-271-1439
sweber@nh.gov

From: Lisa Linowes [mailto:lisa@linowes.com]

Sent: Tuesday, April 21, 2009 7:10 AM

To: Steven J Weber

Cc: barbara@berlindailysun.com; [Edith Tucker](mailto:Edith.Tucker@nh.gov); Richard.A.Roach@usace.army.mil; [Vernon Lang@fws.gov](mailto:Vernon.Lang@fws.gov); wstaats@nhfgd.org; [Ken Kimball](mailto:Ken.Kimball@nh.gov); [Michael Bartlett](mailto:Michael.Bartlett@nh.gov); [Carol Foss](mailto:Carol.Foss@nh.gov); [Laura Deming](mailto:Laura.Deming@nh.gov); Chris416jensen@aol.com; [Kathy Keene](mailto:Kathy.Keene@nh.gov); [Brian Ruth](mailto:Brian.Ruth@nh.gov); [B Nelson](mailto:B.Nelson@nh.gov)

Subject: Onsite visit of GRP mitigation lands

Dear Steve,

I understand from the deliberations of yesterday before the SEC that you've been asked to provide an assessment of the condition of the habitat at the project site, based on an on-site visit to Kelsey and the proposed mitigation lands,

Please note this paragraph which appeared in the Berlin Daily Sun today (highlighting added) based on Friday's hearing:

*"As the discussion moved to impacts on water and wetlands, Harrington noted the area has been extensively logged and is not a "pristine wilderness". **Committee member Glenn Normandeau, of N.H. Fish and Game, said many of the letters filed do present the Phillips Brook area as wilderness. "In my observation, this is one of the most heavily cutover areas I have seen," he said. "***

To my knowledge, neither Normandeau, nor Harrington has visited any of the mitigation sites. For that matter, neither have you or Dave Publicover.

The suggestion that Kelsey is "one of the most heavily cutover areas" is pure prevarication and should not be permitted to stand.

I trust you, or someone from F&G, will be conducting an onsite visit of the mitigation lands when feasible (after some snow melt) and providing a verifiable assessment.

Thank you.

--Lisa