



Industrial Wind Action Group

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

August 14, 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 the attached motion for rehearing. A draft copy of our motion was submitted to all of the parties via electronic mail. Thus far we've heard back from the Applicant who objected to our motion.

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 FOR REHEARING OR AMENDMENT

Industrial Wind Action Group (“IWA”) respectfully moves the New Hampshire Site Evaluation Subcommittee (“Committee”) pursuant to RSA 541:3 and Site rule 202.29 to rehear or amend its July 15, 2009 Decision and Order. IWA submits the following memorandum in support for its motion.

A. Consideration of Alternatives

1. The Subcommittee found that the Applicant “engaged in a reasonable alternatives analysis and made a reasonable determination in its selection of the Coos County site when the High Elevation Mitigation Settlement Agreement is taken into account.” The Committee also states that, while RSA 162-H:16, IV requires the Committee to consider alternatives, the statute does not provide any detailed guidance on how to consider the alternatives.

2. IWA maintains that the Applicant failed to conduct an alternatives analysis necessary for the Committee to consider options that minimize the impact on the natural environment, the orderly development of the area, and other statutory criteria set forth in RSA 162h. The alternatives included with the application or later submitted to the Committee offer insufficient information to consider alternate project scenarios or locations.

3. It appears the Committee did not apply the criteria established in RSA 162h in evaluating alternatives, but instead used business criteria (i.e. wind resource, proximity to transmission, availability of privately-owned lands etc.) we’d expect of the Applicant. There is no reasonable explanation for why the Committee would adopt these criteria; we would argue it is not the Committee’s role to validate a site selection process aimed at maximizing profitability. We would assume that any alternative proffered by the Applicant would have been screened to meet the business criteria.

4. Still, the Applicant provided only the most cursory information on each of the on-site and off-site locations labeled A-E. Financial witness Sundstrom stated under cross-examination that the wind resource data

submitted by the Applicant was only a “first-stage analysis” that was not backed up by a final consultant’s reports and thus was insufficient in determining the project’s financial viability. (Confidential Transcript 3/26/90 P.158-159). Thus, the Committee lacked the requisite data needed to make some of the determinations, particularly regarding wind resource. Rather, the Committee applied the most simplistic criteria of “altitude” to represent the quality of the wind. ((Transcript 4/20/90 P.41-43)

5. During deliberations, the Committee considered an additional alternative involving fewer turbines by removing the towers from Kelsey, Dixville, or both. Although not mentioned in the order, it was clear from the transcripts that the Committee was concerned that any reduction in the number of megawatts could result in the Applicant losing its slot in the interconnection queue. (Transcript 4/20/90 P.41-43) The Chairman correctly acknowledges that no expert testimony had been provided the Committee on whether the interconnection slot would be at risk. Still, Committee members repeated and appeared to accept without substantiation, assertions made by the Applicant (Transcript 4/20/90 P.41-43).

6. Preliminary comparisons of three turbine combinations (60-megawatt, 75-megawatt, and 99-megawatt) were prepared by financial witness Sundstrom showing the internal rate of return on investment would not vary dramatically with fewer turbine clusters. (Confidential Transcript 3/16/09, P.152)

B. Financial, Managerial and Technical Capability

The Committee found that the Granite Reliable Power LLC (“Applicant”) demonstrated adequate financial, technical and managerial capability to construct and operate the proposed facility. IWA has specific concerns with the Decommissioning plan.

Decommissioning

1. In its July 15 2009 decision granting a certificate of site and facility, the Committee ordered that the Agreement between Coos County and Granite Reliable Power LLC (“the Applicant”) become a part of the Order and that any conditions contained within would become conditions of the Certificate. In addition, the Committee included additional decommissioning conditions in Appendix III of the order.

2. By adopting the decommissioning conditions within the order, the Committee recognizes that site restoration is a necessary component of certificating the project. While it is expected that the Applicant, or its successor, will be available and financially able to decommission the site, the purpose of a decommissioning fund is to ensure the public is not burdened at any time with the costs, and risks of completing this task.

3. In section VI.C.1.d of the Committee’s decision titled Decommissioning (P.35), the Committee states “the financial requirements contained within the Coos County/Applicant Agreement are well within the financial,

managerial and technical capabilities of the Applicant and that the Agreement and the additional conditions contained within the Certificate (Appendix III) adequately protect the public in the event that decommissioning of the project becomes necessary.

4. We first note that no information in the record or in the Agreement between Coos County and the Applicant establishes the cost of decommissioning the project. Absent this information, we find no basis on which the Committee can assert the Applicant has the financial capability to meet the conditions of decommissioning. Further, since neither the Committee, nor the County, can reliably predict the Applicant's financial condition at an unknown time in the future it is not possible to know now whether the Applicant can suitably finance the decommissioning of the project. The Agreement between Coos County and the Applicant is vague and provides no detail on the financial vehicle used as the decommissioning fund or necessary protections to ensure the funds will be sufficient and available at any time the money is needed.

5. It is not clear what the Committee is referring to when it states that the additional conditions (Appendix III) will adequately protect the public. If by the phrase "protecting the public" the Committee means that the public will be assured it will not be burdened with any of the costs of dismantling the project, there is nothing in the plain reading of these conditions that addresses this intent. In fact, the first added condition appears aimed at protecting the Applicant, not the public, from a possible premature triggering of the decommissioning requirement.

6. In order to protect the New Hampshire public, the Committee should aver that the local communities and the New Hampshire public shall not be held financially responsible for any decommissioning costs of the project at any time.

7. The Committee should set the proposed bond, or other financial instrument, to reflect the full decommissioning costs, excluding salvage value. Under the current plan, the Committee places the public (not the developer) at risk of future fluctuating scrap market values. The entire risk of future scrap price volatility should be borne by the developer (or financial agent) and not the public.

8. Section 12.d of the Coos County/Applicant Agreement provides a process for updating the total estimated decommissioning costs. In order to protect the public, we ask that the available funds be adjusted annually based on a suitable index such as the "RS Means Heavy Construction Cost Data" index. This adjustment would protect the public from any future escalations in project dismantling costs. For example, if dismantling costs were to escalate at 2.5% per year, dismantling costs would be significantly higher by turbine end-of-life (20 years).

9. Condition 2 of Appendix III appears to replace an important element of the Coos County/Applicant Agreement rather than being additive. The Agreement asserts that the roads will be revegetated back to a width of 12-feet with no reference to elevation whereas the Committee's condition 2 requires that all areas above 2700 feet be restored and fully revegetated. We ask that this condition be reworded to more clearly state the Committee's intent. Further, we ask for clarification of what is meant by the revegetation plan in this condition and

how it might differ, if at all, from the plan between the Applicant and NHFG to revegetate the shoulders of the roads following completion of construction.

10. The Committee makes no comment as to the financial instrument that will be used to contain and manage the decommissioning funds. Given recent financial turmoil and some insurance company difficulties, we ask that the Committee at least require that the amount be insured should any future financial turmoil negatively affect the availability of the funds.

C. Orderly Development

The Committee found that, subject to the conditions set forth in the Certificate, the Project will not unduly interfere with the orderly development of the region. IWA's comments are limited to property values, tourism, interconnection to the grid, and power purchase.

Impacts on Property Values

1. The Committee found that the project will not injure property values in the area. It bases this finding on an expectation that the visual and auditory impacts will be attenuated by distance between area residences and businesses.

2. The Committee reaffirms that the Applicant "provided studies of other wind facilities" that show no negative impact on property values (Pet. Ex. 1.3, Appx. 30a and 30b).

3. We found no applicable information in the record on which the Committee could validly conclude property values will not be impacted.

4. Witnesses for the Applicant, Decker and Lyons, asserted under oath that neither had experience as real estate appraisers, nor did either have any experience in evaluating property tax abatements associate with adjacent land uses and potential negative impacts on homes or other real estate. (Transcript 3/9/09 P.105-106, lns 15-25, lns 1-2)

5. Witness Decker confirmed in testimony that other than Petitioner's Exhibit 1.1 P.98 in the section entitled "Property Values", no other information was included in his testimony about property values. No expert witnesses were proffered by the Applicant to sponsor documentation related to property value impacts i.e. Pet. Ex. 1.3, Appx. 30a and 30b.

6. Following extended cross-examination testimony on property value impacts (Transcript 3/9/09 P.105-112), Witness Lyons asserted "I just want to clarify that we are not offering these reports as evidence about impact on property values in Coos". (Transcript 3/9/09 P.112)

7. There is no data or expert testimony in the record upon which the Committee can conclude the project will have no negative impact on property values. Further, there is no evidence in the record to state the distance the turbines are from residences or businesses is sufficient to mitigate for visual or auditory impacts. The finding of the Committee regarding property values is unsubstantiated by the record.

Impacts on Tourism

1. The Committee found that the project will have no negative effect on tourism in the area claiming “there is nothing indicating that the construction or operation of the Facility will curtail recreational activities in the area. Hiking, fishing, ATV and snowmobile use, and other recreational activities will be essentially unchanged”.

2. We can find no evidence in the record to substantiate this finding. In fact, the Committee spent considerable time during the proceedings and in its deliberations raising concern about the safety of hikers, snowmobilers and other recreationalists. The Committee took pains to devise methods of keeping the public away from the project area. In addition, it placed a condition on the Order to re-situate a segment of the Coos trail. This and other related conditions all suggest that important segments of New Hampshire tourists will be displaced with the construction and operation of the project.

3. The Applicant suggests that the project will encourage eco-tourism by citing visitors to Madison and Fenner, New York as well as Searsburg, Vermont. These three projects are older projects erected prior to 2004 when wind turbines may have been a novelty. We note that the Applicant made no reference to tourism rates related to the numerous Noble-erected turbines in northern New York or the projects in Lempster New Hampshire, Mars Hill, Maine or Danforth, Maine.

4. It should be noted that the predominance of letters written to the Committee by members of the public cited the beauty of the area. Building over thirty miles of access roads spanning between 24- and 36-feet in width including substantial ledge cuts up to 50-feet, and erecting an industrial electric generating facility with attendant transmission lines and other infrastructure will almost certainly alter the existing character of the area and affect those seeking the current solitude and expansive natural beauty of the area.

5. The Committee delegated to the Department of Safety and the Department of Transportation to “specify the use of any appropriate technique, methodology, practice or procedure associated with blasting, transportation of explosives or other heavy loads which shall occur during the construction or decommissioning of the project”. It is clear that enormous vehicles to deliver the turbine parts alone, will require numerous trips to and from the site along State and local roads. There is no information in the record for the Committee to evaluate the impact of these

vehicles or other construction trips on tourists driving to the area. We cannot determine the extent to which tourists will avoid the area altogether during a multi-season construction period.

ISO System Impact Study (SIS)

1. The Applicant provided the Committee and the parties with a draft SIS that evaluated the project against existing power plants in the area and the potential for output curtailment of the subject project or existing power plants on the loop due to transmission constraints.
2. Absent the completed SIS, the Committee cannot be certain of the impacts of the project on the operation of other power plants. Since the ISO-NE's primary obligation is grid reliability and the safe integration of the project to the grid, any required adjustments to output necessary to ensure grid integrity are outside the Committee's and the Applicant's control. However, if the operation of the project results in curtailed output from any of the other renewable plants on the Coos County loop this could result in a highly negative economic condition. Such a condition cannot be evaluated without a reading of the final SIS.
3. Given the fundamental importance of the SIS to the project and the area, we ask that two conditions be added to the Order as follows:
 - a) Require the Applicant to submit the final SIS study along with any interconnection and substation plans to the Committee and parties prior to any construction activities.
 - b) The parties will have two weeks to file comments on the SIS study. The Applicant will also be required to implement any changes determined necessary by ISO-NE to ensure system stability and reliability and to pay any costs associated with measures designed to ensure that the project does not adversely affect system stability and reliability.

Power Purchase

1. New Hampshire's PUC has been petitioned by Clean Power Development (Docket DE 09-067t) in the matter involving PSNH's refusal to negotiate a power purchase agreement for the proposed 29 megawatt biomass plant in Berlin. We believe this case informs how the Committee might best proceed on this project.
2. The Applicant has stated that it will be seeking a power purchase agreement and that such an agreement may be a requirement in today's difficult finance market. The Committee has ordered that construction not commence until financing for the project is confirmed. We encourage the Committee to also

require an executed power purchase agreement prior to construction to ensure the operating project is not idled due to no energy sales.

D. Natural Environment: Bird and Bat Analysis

1. Although the Committee admits the Settlement Agreement allayed its concerns over the impacts on the natural environment (P.27 of the Decision), it is clear the Committee still has concerns regarding other wildlife issues, specifically breeding birds and raptors, bats, and migratory birds.

2. According to the Settlement Agreement (Provision A.8), testimony of Dr. Publicover (Transcript, 3/13/2009, P.256, lns 5-9) etc., the Agreement centered on protecting and preserving sensitive high-elevation ecosystems and habitat and cited specific species of concern including the pine martin, three-toed woodpecker, Canada Lynx and the Bicknell's thrush.

3. In an attempt to address remaining wildlife questions, the Committee ordered additional pre- and post-construction surveys to either establish baseline utilization of the project area by breeding birds or to assess the rate of mortality of bats and migratory birds post-construction.

4. Despite the order for additional studies, the Committee proceeded with an apparent implied finding that the project will not have an unreasonable adverse effect on breeding birds, raptors, bats, or migratory birds. To reach such a finding legitimately, the Committee would have had to require valid pre-construction wildlife studies prior to issuing its order, as well as the establishment of fatality thresholds that would prompt operational adjustments. Without data from additional studies, we fail to understand the basis for the Committee's finding of no unreasonable effect.

5. The Committee allows that "if after notice and an opportunity to be heard, the Site Evaluation Subcommittee determines that the Project is having an unreasonable adverse impact on any species, it may take appropriate action within its jurisdiction". Since the condition makes no reference as to who can notice the Committee, we assume that any person with knowledge of the effect of the turbines on wildlife can do so. The Committee has failed to establish any criteria or method of determining what triggers an unreasonable adverse impact.

6. As ordered, the Committee delegated all authority for wildlife review to NHF&G and the Applicant or its agents rather than a technical committee as was established for the Lempster Wind project and as advocated for by most parties to these proceedings, including NHF&G. Given several factors including (a) the number of stakeholders impacted by the project including the US Forest Service and Nature Conservancy with lands within the viewshed of the turbines, (b) the existing monetary arrangement agreed to between NHF&G and the Applicant,

and (c) NHF&G's admitted lack of experience with wind energy development related to some species and wildlife impacts, IWA strongly recommends the Committee amend its order to require an independent technical committee as ordered for the Lempster Wind project. Further, it would be a conflict of interest, thus strongly ill advised to permit the Applicant, through its agent Stantec, to define the post-construction studies, implement the protocols, and report the findings.

7. Amendment to the order is recommended to ensure the Applicant provides funds commensurate with the level of independent expert activity necessary to properly monitor and protect New Hampshire's wildlife resources from the development. It is inappropriate for New Hampshire's public through NHF&G to bear the costs for this essential activity.

E. Other: Conflict of Interest

1. Per IWA's April 16 2009 motion "Seeking withdrawal of NH Fish & Game Director Normandeau from the Subcommittee" IWA renews its complaint 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 voted, questions linger about whether the situation caused him to vote one way or the other.

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

3. Per the Committee, the mitigation settlement signed between the Applicant, NHF&G and AMC was fundamental to the Committee arriving at its finding that the project would not cause an unreasonable adverse effect on the Natural Environment ("*The Subcommittee noted that, in the absence of the Settlement Agreement, it would have had considerable difficulty in approving the Project as proposed due to the potential effects on the high elevation ridge line.*" P.27 of the Decision)

4. It is reasonable to expect that other members of the Committee may have applied greater weight to Director Normandeau's comments regarding potential impacts to the project on wildlife. We cannot know the degree to which Director Normandeau influenced his fellow Committee members.

5. The question of conflict persists even after the Committee issued its decision and order. The conditions established in the Committee's Order, including the High Elevation Mitigation Plan subsumed in the Order, place substantial burden on NHF&G to oversee and evaluate ongoing wildlife and habitat activities, including additional pre- and post-construction studies. We believe that Director Normandeau's ability to influence

the internal activities of the Agency in regard to this project raises serious doubts as to whether the public's interest is compromised.

6. Given the potential for the Committee to be petitioned to resolve disputes between NHF&G and the Applicant, Director Normandeau would be required to maintain his distance from any work involving NHF&G on the project. Despite Mr. Normandeau's assertions that he erected a "firewall" within the Agency with respect to this matter, we know from the April 21 e-mail between Mr. Steve Weber and Lisa Linowes (included with IWA April 27 motion to reopen the record) that maintaining the firewall is, at best, difficult.

7. Chairman Getz argued that "...the structure of the Site Evaluation Committee presumes that there will be members of the Committee acting on applications before it that will relate to subject matters relative to the duties and obligations of the agency." (Transcript, 4/17/2009, pg. 16). We disagree that the Chairman's in that nothing in RSA 162h allows for State agencies to intervene in proceedings before the Committee, thus the legislature did not contemplate such a conflict. In fact, it was a ruling by Chairman Getz that permitted the intervention by NHF&G and not anything considered by the legislature.

IWA respectfully requests consideration of this motion by the Committee and that further actions be taken as the Committee deems necessary and prudent in addressing our concerns herein. Thank you for your attention to the important matter.

Dated this day of August 14, 2009

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By:



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cc: Parties to Docket 2008-04