

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2010-03**

**Joint Application of Granite Reliable Power, LLC ("GRP") and Brookfield Power Inc. ("Brookfield Power") for Approval to Transfer Equity Interests in GRP ("Joint Application")**

**ORDER GRANTING PETITIONS TO INTERVENE**

**Issued January 19, 2011**

**Background**

On July 15, 2009, the Site Evaluation Committee (Committee) issued a Certificate of Site and Facility with Conditions to Granite Reliable Power, LLC, (Certificate) for the siting, construction, and operation, of a wind turbine facility consisting of 33 wind turbines with a nameplate capacity of 3 MW each for a total capacity of 99 MW. The certificated facility is to be sited, constructed, and operated in the unincorporated places of Dixville, Ervings Location, Millsfield and Odell and in the incorporated Town of Dummer (Facility).

On December 3, 2010, Granite Reliable Power, LLC (GRP) and Brookfield Renewable Power Inc. (Brookfield) filed a Joint Application for Approval to Transfer the Equity Interests of Noble Environmental Power, LLC (Noble) to Brookfield under RSA 162-H (Joint Application). GRP is currently owned by Noble (75%) and Freshet Wind Energy, LLC (25%). The Joint Application seeks approval from the Committee to transfer Noble's 75% interest in GRP to Brookfield. Such approval is required by the conditions to the Certificate and may also be required pursuant to RSA 162-H. The Committee's authority to approve or deny the proposed transfer is set forth at RSA 162-H: 4, RSA 162-H: 5, and N.H. CODE OF ADMINISTRATIVE RULES, Site 203.

On December 17, 2010, the Committee issued an Order and Notice of Prehearing Conference and Public Hearing scheduling a prehearing conference for January 3, 2011, and the merits hearing for January 31, 2011. In addition, the Order required that all motions to intervene in this docket must be filed by January 3, 2011.

The Committee has received two Motions to Intervene. The first was filed by the Industrial Wind Action Group (IWAG), an intervenor in the original docket in which this Project was certificated. The second Motion to Intervene was submitted in the form of letter from Frederick W. King, Coos County Treasurer, who sought to be "recorded as an intervenor." For the reasons set forth below both Motions to Intervene are granted.

### **Standard for Intervention**

The New Hampshire Administrative Procedure Act, R.S.A. 541-A, dictates when an administrative agency must allow intervention. See, R.S.A. 541-A:32, I. The statute also sets forth circumstances under which an administrative agency may allow intervention but is not required to do so. See, R.S.A. 541-A:32, II.

R.S.A. 541-A:32, I, outlines the criteria which require the Committee to grant a petition for intervention and states, in pertinent part, that a person seeking to intervene must establish the following:

“(b) . . . facts demonstrating that the petitioner’s rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(c) . . . that the interest of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” R.S.A. 541-A:32, I (b), (c).

The statute also permits the Presiding Officer to allow intervention “at any time upon determining that such intervention would be in the interest of justice and would not impair the orderly and prompt conduct of the proceedings.” R.S.A. 541-A:32, II.

Similarly, the Committee’s procedural rules provide:

(b) The presiding officer shall grant a petition to intervene if:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer’s order of notice of the hearing, at least 3 days before the hearing;

(2) The petition states facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

(c) The presiding officer shall grant one or more late-filed petitions to intervene pursuant to RSA 541-A:32, II upon

determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11.

In addition to the plenary provisions of the Administrative Procedure Act pertaining to intervention, the Act also requires that an administrative agency give notice to, and afford all effected municipalities, a reasonable opportunity to submit data, views, or comments with respect to the issuance of a permit, license, or other action within its boundaries that directly affect the municipality. See, RSA 541-A:39.

Importantly, the Administrative Procedure Act and the Committee's Rules also allow the Presiding Officer to place limits upon the authority of a party to intervene. See, R.S.A. 541-A: 35, II; N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11 (d). The Presiding Officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate or combine intervenors and other parties for the purposes of the proceeding so long as the limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention. Id.

### **Analysis of Motions to Intervene**

Both the Administrative Procedure Act and the Committee's rules permit intervention by any party when "such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings". See, RSA 541-A: 32, II; N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11. Intervention by a party with no affected interest is permitted in the discretion of the Presiding Officer if he finds that the interests of justice support such intervention and the prompt and orderly conduct of the proceedings would not be impaired.

### **Industrial Wind Action Group**

IWAG asserts that its "substantial interest in issues pertaining to this matter have not changed since the Committee approved the project." In the Motion to Intervene considered by the Committee in the certifying docket (Application of Granite Reliable Power, LLC, Docket No. 2008-04), IWAG alleged that the construction of the Facility will impact the interests of the visitors to the State of New Hampshire as it will affect the natural environment, aesthetics and natural beauty of the State. Therefore, IWAG concludes that its subscribers have substantial interests, both local and regional, in the outcome of the proceedings in this docket.

Brookfield and Counsel for the Public do not object to the IWAG's Motion to Intervene. GRP objects to IWAG's Motion stating that IWAG has not demonstrated a substantial interest that is affected by the proceedings.

In the certification docket (Application of Granite Reliable Power, LLC, No. 2008-04), the Committee found that IWAG did not possess rights, duties, privileges, immunities or other substantial interests which might be affected by the certification proceedings. See, Order Granting Petitions to Intervene and Revising Procedural Schedule, October 14, 2008, Docket No. 2008-04. Nonetheless, the Committee permitted IWAG to participate as an intervenor in the certification docket (along with other organizations including the New Hampshire Wind Energy Association and the Appalachian Mountain Club) because such participation would “contribute to a thorough exploration of the important issues that the SEC must consider . . . .” Id. at p. 6. IWAG’s motion to intervene in this docket does not assert any new facts that demonstrate an interest that is directly affected by these proceedings. Nonetheless, IWAG’s participation in the certification docket did contribute to the Committee’s exploration of important issues and will likely assist the Committee in these proceedings. Intervention by IWAG will not impair the orderly and prompt conduct of the proceedings in this docket. Therefore, the Committee will exercise its discretion and allow IWAG to participate as an intervenor in this docket pursuant to RSA 541-A:32, II and N.H. CODE OF ADMINISTRATIVE RULES, SITE 202.11(C). IWAG will be required to comply with all rules of the Committee.

### **Frederick W. King, a Coos County Treasurer**

By letter dated December 22, 2010, Frederick W. King, Coos County Treasurer, requested “to be recorded as an intervenor” in this docket. In his letter, Mr. King points out that Coos County is the municipal government for the unincorporated places in which Project siting has been approved. Mr. King asserts that the Project has had the full support of County officials and the County Planning Board and that the County adopted a resolution supporting the transfer of interest in GRP to Brookfield. Mr. King seeks intervention as an elected official of Coos County.

Under RSA 541-A:39, an administrative agency should give notice to, and afford all affected municipalities, a reasonable opportunity to submit data, views, or comments with respect to the issuance of a permit, license, or other action within its boundaries that directly affect the municipality. It is undisputed that Mr. King, as an elected official, should be given the opportunity to participate in this docket. Mr. King’s participation as Coos County Treasurer will be in the interests of justice where Mr. King will provide the Committee with the first-hand knowledge of the County’s interests and views in regard to the proceedings in this docket. Participation by Mr. King will not impair the orderly and prompt conduct of the proceedings. Therefore, the motion of Mr. King as Coos County Treasurer to intervene in this docket is granted.

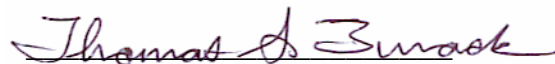
### **Conclusion and Order**

Based upon the foregoing, it is hereby:

ORDERED that the Motion of Industrial Wind Action Group to intervene in this docket is GRANTED, and it is,

FURTHER ORDERED that the Motion filed by Frederick W. King, Coos County Treasurer, to intervene in this docket is GRANTED.

January 19, 2011

  
Thomas S. Burack, Chairman  
Site Evaluation Committee