

April 3, 2014

VIA E-MAIL ([jane.murray@des.nh.gov](mailto:jane.murray@des.nh.gov))  
AND FIRST CLASS MAIL

Thomas S. Burack  
Chairman and Presiding Officer  
NH Site Evaluation Committee  
Department of Environmental Services  
29 Hazen Road, Box 95  
Concord, NH 03301

**RE: Docket 2014-3, Reply by Granite Reliable Power, LLC to Objection of Counsel for the Public to Expedited Motion to Amend the Certificate of Site and Facility Granted in Docket No. 2008-04**

Dear Chairman Burack:

Enclosed for filing with the New Hampshire Site Evaluation Committee (the "Committee") in the above-captioned matter are an original and eighteen (18) copies of the Reply by Granite Reliable Power, LLC ("Granite") to Objection of the Public Counsel for the Public to Granite's Expedited Motion to Amend the Certificate of Site and Facility granted by the Committee in Docket No. 2008-04.

This Motion includes as Exhibit A the proposed Amendment to the High Elevation Mitigation Settlement Agreement between New Hampshire Fish and Game Department ("NHF&G"), the Appalachian Mountain Club ("AMC"), and Granite, with signatures from AMC and NHF&G included. Included as Exhibit B is a letter from the Committee's own counsel regarding this application. Exhibits C and D are portions of transcripts from 2009 Committee hearings regarding the application for the Certificate.

As noted in the Reply, Granite is seeking a *de minimis* amendment to the Certificate in concert with NHF&G and AMC. This amendment will allow the parties to better maintain the project, and better mitigate any adverse environmental impacts. Expedited consideration by the Committee will allow the parties to take full advantage of the upcoming planting season, and give seedlings maximum opportunity to grow before the winter months.

PRETI FLAHERTY

Chairman Burack  
April 3, 2014  
Page 2

Thank you for your continued attention to this matter. I look forward to attending the hearing scheduled for April 7.

Sincerely,



Harold C. Pachios

MSW:  
Enclosures

Cc: Joshua L. Stayn  
Sigmund D. Schutz  
Kyle Murphy  
Kevin Bernier  
Anthony Zarrella  
Todd Wynn  
Michael Iacopino, Esq.  
Peter C. L. Roth, Esq.

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2014-03**

**REPLY BY GRANITE RELIABLE POWER LLC TO OBJECTION OF COUNSEL FOR  
THE PUBLIC TO EXPEDITED MOTION TO AMEND THE CERTIFICATE OF SITE  
AND FACILITY**

NOW COMES Granite Reliable Power LLC (“Granite”) and replies to Counsel for the Public’s objection to Granite’s Expedited Motion to Amend the Certificate of Site and Facility (the “Motion”). The New Hampshire Site Evaluation Committee (the “Committee”) clearly has authority to amend the Certificate of Site and Facility (“Certificate”). The proposed amendment alters only a single phrase in the High Elevation Mitigation Agreement (“the Agreement”), which the Certificate incorporates, and leaves the other ninety-nine percent of the Certificate untouched. The Amendment will better mitigate the project’s environmental effects while allowing for important turbine maintenance to occur with minimal environmental disruption. Granite’s Motion asks the Committee to determine whether the Appalachian Mountain Club, New Hampshire Fish and Game Department, and Granite, the original and only parties to the High Elevation Mitigation Agreement, have agreed to an amendment which is inconsistent with the evidentiary record on which the Certificate rests. All the evidence necessary to support Granite’s request is contained in the Amendment itself, the incorporated High Elevation Restoration Plan, and the transcripts contained in the original record. Granite files with this reply a copy of the amendment executed by New Hampshire Fish & Game and the Appalachian Mountain Club.

- A. Expedited Consideration Is in the Public Interest and New Hampshire Fish & Game Has Executed the Amendment.**

The Public Advocate has not asked the Committee to postpone the already-scheduled and noticed hearing. Public counsel is asking the Committee to take evidence on the question of the environmental impact of the amendment. The transcripts contained in the original record contain more than enough evidence on which to base a conclusion on this issue. Moreover, it is in each party's interest and the public's interest to expedite replanting to give seedlings maximum opportunity to grow. Early consideration of this Motion will ensure that Granite may begin planting early in the season.

Public counsel questions whether the New Hampshire Fish and Game Department ("NHF&G") and the Appalachian Mountain Club ("AMC") have assented to the Amendment to the High Elevation Mitigation Settlement Agreement ("Amended Agreement"). The Amended Agreement attached to the Motion included the signature of the AMC, clearly documenting that organization's assent. NHF&G has since executed the Amended Agreement as well. (The Amended Agreement including the signature of NHF&G is attached hereto as **Exhibit A**). In fact, Granite has worked with both organizations at every step of the way to ensure that any proposed Amendment would provide for mitigation equal to or greater than provided for in the Certificate.

**B. The Committee Is Not Barred from Approving an Amendment to a Certificate.**

Public Counsel suggests that the Committee lacks the authority to agree to any amendments to the Certificate. Granite moved to amend the Certificate only after consultation with the Committee's counsel who advised that "the extension of the width of the roadways would have to be brought to the Committee through a petition to modify or amend the Certificate of Site and Facility." See Letter from Attorney Iacopino to Department of Environmental Services (Sep. 13, 2013) (attached hereto as **Exhibit B**).

Counsel for the Public mistakenly relies on the doctrine of judicial estoppel to suggest that the Committee is not permitted to consider a Motion to Amend the Certificate. The doctrine of judicial estoppel “prevents a party from prevailing in one phase of a case using one argument and then relying upon a contradictory argument to prevail in another phase.” Pike v. Mullikin, 158 N.H. 267, 270 (2009). This doctrine is inapplicable here, where, for practical reasons, Granite seeks to amend its Certificate so that it may better achieve intended purposes of the original Committee approvals. The question before the committee is straightforward: Should the Committee approve an amendment to a single phrase of Granite’s certificate? Taken to its logical conclusion, the Public Counsel’s argument would suggest that the Committee can never consider any amendment to a Certificate, since every amendment—by its very definition—necessarily alters the terms of a Project as initially considered and approved. This would establish an unwieldy precedent that would place an unreasonable restriction on the Committee. A better precedent would allow the Committee to consider whether an amendment is (1) *de minimis*; (2) not inconsistent with the prior evidentiary record; and (3) required for safety or practical reasons.

Moreover, the Committee expressly allowed for amendments at the time of initial approvals. The Certificate states that the conditions within the Agreement “shall be conditions of this Certificate.” See Certificate, p. 3. One condition of the Agreement provides for the Agreement to be amended “by an instrument in writing signed by the Parties.” See Agreement, ¶ C(12). The Committee had good reason to approve an Agreement with the flexibility to be amended by consent of all three parties: After several years of operations and experience, the parties have a greater understanding of how the Project can better meet its energy purpose while limiting adverse impact on the surrounding environment. Of significance in weighing the

opposition to the amendment is the fact Public Counsel was not an original party to the Agreement.

**C. Granite Moves to Alter a Single Term of the Certificate to Improve the Project's Energy Value and Lessen Its Environmental Impacts.**

This Amendment seeks to alter a single term of a complex and comprehensive Certificate. The SEC approved the Certificate only after a thorough inquiry which included a number of lengthy hearings, volumes of evidence produced in favor of and in opposition to the Windpark, and the extended negotiation of the High Elevation Mitigation Settlement Agreement. The Amendment will leave ninety-nine percent of the conditions of the original Certificate in effect, alters but a single sentence of the Agreement, and is proposed with the benefit of experience to define exactly how the parties can better achieve the goals of the Certificate. The facts included in the Amended Agreement, the High Elevation Restoration Plan incorporated into that Agreement, and the evidentiary record on which the Certificate currently rests provide a more than sufficient factual basis for the Committee to approve this amendment.

Widening of the Mt. Kelsey road for maintenance purposes is consistent with the understanding of the Committee at the time it issued the Certificate. The Committee specifically addressed this issue during its 2009 hearings to consider the project application. In one exchange, Committee Member Harrington questioned Mr. LaFrance, President of Horizons Engineering, about revegetating roadways after completing maintenance work<sup>1</sup> (relevant portions of transcript attached hereto as **Exhibit C**):

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<sup>1</sup> Transcript of Site Evaluation Committee Hearing at 264:12 – 265:11, In re: Site Evaluation Committee Docket No. 2008-04 (Mar. 11, 2009) (Day 3).

**Q:** [I]n order to maintain these turbines, there's the possibility that you'd have to bring the crane back up there for some reason... Could you do that and not have to re-open these 12-foot wide roads to back to some wider amount?

**A. (LaFrance)** It's unlikely that we would be able to bring a replacement component up there, a blade or a tower section or a nacelle, without having to go back and widen the road again.

**Q.** So, and, in fact, because of the growth time included ... there's a good possibility, let's just say, it's possible that these roads will never be revegetated down to the 12-foot wide area. Because, if it was, let's say, seven or eight years down the road, you had to clear-cut them out again to bring in a crane....then, you know, maybe five or six or seven years after that you had to do it again, there would be a continual process of cutting these. So, you would never really see them grow back to where they were pre-construction?

**A. (LaFrance)** That's correct...

In another exchange, the Commission acknowledged that the high elevation access roads would have to be widened for maintenance purposes from time-to-time<sup>2</sup> (relevant portion of transcript attached hereto as **Exhibit D**):

**Q. (Commissioner Harrington)** I'm assuming that, if it's required to perform maintenance two, three, four, ten, fifteen years down in time, that the road will have

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<sup>2</sup> Transcript of Site Evaluation Committee Hearing at 80:1-8, In re: Site Evaluation Committee Docket No. 2008-04 (Mar. 13, 2009) (Day 4). Note that Steven Pelletier, Principle Biologist for Stantec Consulting also noted during his testimony that "given that maintenance has to happen in the -- over the long term, that that area that's got the vegetated will basically be cleared to allow that equipment to be up, and then allowed to regrow again." *Id.* at 111:20-23.

to be widened in order to allow the -- as necessary, to allow the trucks, cranes, spare rotors, whatever, in?

**A. (Mark Lyons, Esq. for Granite)** Just as necessary.

**Q.** Just as necessary. Okay.

Today, hindsight has established that the project's turbines require greater and more frequent maintenance than originally thought, and so in light of this reality, Granite, AMC, and NHF&G have amended the Agreement to "better mitigate potential adverse environmental impacts," Amended Agreement, p. 1 (*Whereas* no. 6). Granite can continue to revegetate each time its cranes are required to traverse the Mt. Kelsey access road, but this amendment proposes to implement better environmental practices which better serve the public interest.

What is more, the proposed amendment reflects the enhanced understanding of the AMC and NHF&G as to the most effective means of environmental mitigation. For example, during original committee hearings, NHF&G personnel expressed a preference to revegetate with seedlings in multiple areas of the project, rather than with grass seeds along roadbeds.<sup>3</sup> Although this preference was not adopted at the time, experience has shown that it is the more effective strategy. After monitoring the as-built project for a period of time, the parties adopted a revised High Elevation Restoration Plan ("HER Plan"), incorporated into the Proposed Amendment, which states that a "component of the original plan that included stabilization of the organic material with high elevation grasses has been eliminated due to concerns that the grass may provide habitat for mice and associated undesirable predators." See HER Plan, attached to

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<sup>3</sup> Mr. William Staats, Wildlife Biologist with Fish and Game noted at one such hearing that "our preference would be to see that revegetate with natural vegetation, preferably spruce or -- preferably balsm fir and spruce...from seedlings from the site, that are endemic to that site, so -- versus introducing grasses that are perhaps non-native." Exhibit D at 131:3-17.

Exhibit A of the Motion, §3. “As an alternative, straw mulch will be applied where new organic material is placed or disturbed and will have the additional benefit of lowering the albedo and retaining moisture of the organic material.” Id., §3.2.d.

Granite, AMC, and NHF&G have also noted that the the proposed Amendment will minimize the possibility of undesirable spruce-fir forest habitat fragmentation though “planting of endemic tree seedlings to increase forest habitat connectivity.” Id. Accordingly, “[t]o offset the reduction in revegetation area on the roadways, Granite will replant the number of trees corresponding to the reduced area, but do so in other adjacent beneficial areas such that the same or greater total number of tree seedlings specified in the approved December 2010 HER plan are planted.” Id., §3.2.

The HER Plan also addresses concerns of the “Army Corps of Engineers, NHF&G and NHDES” by “increase[ing] forest cover on wind turbine pad areas while considering the need for crane access during future wind turbine maintenance.” Id., §3. Overall, the HER Plan provides the Committee with a detailed description of the proposed restoration efforts including location and number of trees to be planted, grading of access roads, soil preparation, stabilization and moisture retention, and procedures for ongoing project maintenance, among other details.

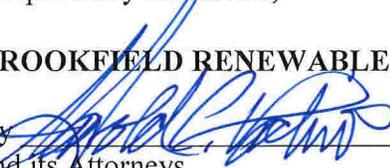
The Public Advocate’s note that Granite has not submitted prefiled testimony confuses the upcoming April 7<sup>th</sup> hearing to deliberate the merits of the Motion with the adjudicatory hearings which this Committee often oversees. This Motion to amend an individual phrase within the Certificate, based on an Amended Agreement signed by NHF&G and AMC, is not the type of question subject to such evidentiary hearings. The proposed Amendment comports with the understanding of the Committee during the original 2009 hearings and only minimally alters the project to adjust for operational realities and for deficiencies in project’s original

environmental mitigation plan. This Amendment is not necessary to the project's continued operation, but it will improve operational efficiency, avoid further repeated disruption and devegetation of the Mt. Kelsey environment, and better mitigate environmental concerns identified by AMC and NHF&G.

Granite thanks the Committee for its timely consideration of the Motion.

Respectfully submitted,

**BROOKFIELD RENEWABLE POWER INC.**

By   
and its Attorneys,  
Preti Flaherty Beliveau & Pachios PLLP  
P.O. Box 1318  
57 North Main Street  
Concord, NH 03302-1318

By: Harold C. Pachios and  
Sigmund D. Schutz (NH Bar No. 17313)  
(207) 791-3000

April 3, 2014

**AMENDMENT TO HIGH-ELEVATION MITIGATION SETTLEMENT AGREEMENT**

Granite Reliable Power, LLC, (“Granite”), the New Hampshire Fish and Game Department (“NHFG”) and the Appalachian Mountain Club (“AMC”) (collectively the “Parties”) enter into this Amended Agreement as of the last date signed below.

WHEREAS the Parties previously executed a High-Elevation Mitigation Settlement Agreement (the “Agreement”) to govern the construction by Granite of a 99-megawatt wind power facility (the “Windpark”) located in the unincorporated places of Millsfield, Ervings Location, Dixville and Odell and the town of Dummer in Coos County, NH.

WHEREAS Granite completed construction of the Windpark and satisfied all required mitigation by the Fall of 2012, including re-vegetation of the Mt. Kelsey roadway so the roadbed is limited to 12 feet in width.

WHEREAS after further engineering and operational evaluation Granite has determined that the cranes, equipment and vehicles necessary to perform regular repairs and maintenance on the Windpark’s turbines, which are necessary for the Windpark to provide a renewable source of energy, will require that the roadbed be wider than 12 feet where necessary.

WHEREAS the Parties agree that re-vegetating Mt. Kelsey roadways each time maintenance is performed on the Windpark’s turbines neither is sustainable nor will benefit the high-elevation ecosystems.

WHEREAS based on the post construction pine martin study there is evidence of winter mortality by canine predators that are gaining access by way of the road, predation that potentially could be enhanced due to high elevation roadside grass seeding and resultant creation of attractant prey population habitat.

WHEREAS the Parties agree that re-vegetation efforts should be undertaken at multiple beneficial areas of the Windpark and modified to enhance natural forest regeneration so as to better mitigate potential adverse environmental impacts and that other restoration measures are appropriate.

NOW THEREFORE, the Parties covenant and agree to amend the Agreement as follows:

1. Strike the final sentence of Paragraph A.5, so that Paragraph A.5 reads: “Within the Retained Land on Mt Kelsey, only those trees necessary for project construction will be cut. Once construction is completed, there shall be no commercial timber harvesting in this area.”
2. Add Paragraph A.5.a to read: Granite agrees to comply with and to reasonably perform all restoration procedures defined in Granite’s “High Elevation Restoration Plan” as attached hereto as **Exhibit A** and which is incorporated herein by reference.

WITNESS

Janya L Haskue

New Hampshire Fish and Game Department



By: \_\_\_\_\_  
Date: \_\_\_\_\_

WITNESS

\_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Appalachian Mountain Club

By: \_\_\_\_\_  
Date: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

WITNESS

\_\_\_\_\_

Granite Reliable Power, LLC

By: \_\_\_\_\_  
Date: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

WITNESS

\_\_\_\_\_

New Hampshire Fish and Game Department

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

WITNESS

*JMKennedy*  
LeeMarie Kennedy

Appalachian Mountain Club

By: *[Signature]*  
Date: \_\_\_\_\_

Name: *John Judge*

Its: *President & CEO*

WITNESS

\_\_\_\_\_

Granite Reliable Power, LLC

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BRENNAN  
CARON  
LENEHAN &  
IACOPINO**

ATTORNEYS AT LAW

85 BROOK STREET  
MANCHESTER, NEW HAMPSHIRE 03104

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KATHLEEN A. HICKEY  
WILLIAM J. QUINN\*\*  
JAYE L. RANCOURT  
IRYNA N. DORE\*  
JENNA M. BERGERON\*

*Of Counsel*  
JAMES A. CONNOR

\*Also admitted MA  
\*\*Also admitted ME

September 13, 2013

Craig D. Rennie, Environmentalist IV  
Dept. of Environmental Services  
Water Pollution Division  
29 Hazen Dr., Box 95  
Concord, NH 03302-0095

Via E-mail Only

**Re: Granite Reliable Power, LLC**

Dear Mr. Rennie:

Thank you for providing to me a copy of the August 28, 2013 resource agency memo prepared by Clare S. Kirk from Brookfield Renewable Energy Group. You have forwarded that to me in my capacity as counsel to the Site Evaluation Committee and have asked whether or not the provisions contained in the approval requested are matters that can be modified under the authority of the New Hampshire Division of Environmental Services under the Certificate of Site and Facility for this project.

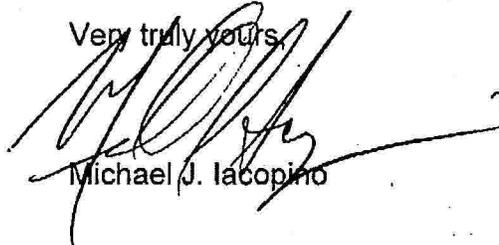
I have reviewed the request for approval, as well as the Order and Certificate of Site and Facility, the Decision and the high elevation settlement agreement which was made a part of the Decision in this docket. On Page 3 of the Order and Certificate, the Site Evaluation Committee did delegate to the New Hampshire Department of Environmental Services the authority "to specify the use of any appropriate technique, methodology, practice or procedure associated with the conditions of the wetlands permit, the alteration of terrain permit, and the water quality certificate, including the authority to approve minor modifications to said permits and certificates". While it does appear to me that the request for approval and modification may impact some of the DES permits, it also has a substantial impact on the high altitude elevation settlement agreement which deals with issues beyond the three (3) permits issued by the Department of Environmental Services. In this regard, I cannot conclude that the portion of the requested approval extending the width of the road bed from 12 feet to 16 feet constitutes a minor modification of any of the permits issued by DES. More importantly, it does constitute a modification to the high elevation settlement agreement and those portions of the Decision and Order and Certificate of Site and Facility that pertain to the high elevation areas on Mount Kelsey.

Craig D. Rennie, Environmentalist IV  
September 10, 2013  
Page 2

I cannot tell from the documents that you provided to me whether or not the Appalachian Mountain Club has been involved in any discussions regarding proposed modifications to the high elevation settlement agreement. However, your correspondence does indicate that William Staats at New Hampshire Fish & Game was on the distribution list for the modification request. I respectfully suggest that you bring the Appalachian Mountain Club as well as Counsel for the Public to the table regarding any discussion of a modification of the high altitude settlement agreement in this docket.

From my review of the Decision and Order and Certificate of Site and Facility, it appears that the extension of the width of the roadways would have to be brought to the Committee through a petition to modify or amend the Certificate of Site and Facility. To the extent that the actual parties to the high elevation settlement agreement can agree, it may be possible to convene a Site Evaluation Committee meeting in a relatively short period of time. However, if this is to be a contested matter, I would expect that it would not be resolved until some time during the winter months.

Very truly yours,



Michael J. Iacopino

MJI/tm

cc: Richard Roach, US Army Corps of Engineers  
William Staats, NH Fish & Game  
Dr. David Publicover, Appalachian Mountain Club  
Dr. Kenneth Kimball, Appalachian Mountain Club  
Sigmund Shutz, Esq.  
Harold Pachios, Esq.  
Peter Roth, Counsel for the Public

Exhibit C

GRP-DAY3.txt

1

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3  
4 March 11, 2009 - 10:05 a.m.  
Public Utilities Commission  
21 South Fruit Street DAY 3  
5 Concord, New Hampshire [REDACTED - FOR PUBLIC USE]

6  
7 In re: SITE EVALUATION COMMITTEE:  
SEC DOCKET NO. 2008-04:  
8 Application of Granite Reliable  
Power, LLC, for a Certificate  
9 of Site and Facility for the  
Granite Reliable Power  
10 windpark in Coos County, New  
Hampshire.

11  
12 PRESENT: SITE EVALUATION COMMITTEE:  
13 Thomas B. Getz, Chrmn. Public Utilities Commission  
(Chairman of SEC Subcommittee - Presiding)  
14 Donald Kent Dept. of Resources & Econ. Dev.  
15 Glenn Normandeau, Director Fish & Game Department  
Robert Scott, Director DES - Air Resources Division  
16 Christopher Northrop N.H. Office of Energy & Planning  
william Janelle Dept. of Transportation  
17 Michael Harrington Public Utilities Commission

18  
19 \* \* \*  
20  
21 Counsel for the Committee: Michael J. Iacopino, Esq.

22  
23 COURT REPORTER: Steven E. Patnaude, LCR No. 52

24  
2

1 APPEARANCES:  
2 Reptg. Granite Reliable Power, LLC,  
and Noble Environmental Power:  
3 Douglas L. Patch, Esq. (Orr & Reno)  
Susan S. Geiger, Esq. (Orr & Reno)  
4 Reptg. Counsel for the Public:  
Page 1

19 configuration, I don't know. It would be more  
20 difficult. We might have to shut the turbine down to  
21 get by it. I think most of the difficulty would be  
22 during construction. You know, you've got this 500-ton  
23 crane there, and it's a little bit shaky. You'd like  
24 to have that activity going on independent of trying to

{SEC 2008-04} [Day 3 - REDACTED] {03-11-09}

264

[WITNESS PANEL: Lobde1|LaFrance]

1 drive by.

2 DIR. NORMANDEAU: Okay. Thank you.

3 CHAIRMAN GETZ: Mr. Harrington.

4 BY MR. HARRINGTON:

5 Q. Okay. Just getting back to the roads for a second. I  
6 guess we stated we had -- there's going to be different  
7 widths of the roads, depending on the location, for  
8 various reasons. Now, there was also a statement that  
9 the roads would be "returned to 12-foot wide", and  
10 that's where we get into the different types of seeds  
11 being planted and so forth. So, now, I guess my  
12 question would be, in order to maintain these turbines,  
13 there's the possibility that you'd have to bring the  
14 crane back up there for some reason, or maybe a turbine  
15 blade showed some type of cracking or something that  
16 had to be replaced. Could you do that and not have to  
17 re-open up these 12-foot wide roads to back to some  
18 wider amount?

19 A. (LaFrance) It's unlikely that we would be able to bring  
20 a replacement component up there, a blade or a tower  
21 section or a nacelle, without having to go back and  
22 widen the road again.

23 Q. So, and, in fact, because of the growth time included  
Page 222

24 here, more than likely these roads -- there's a good  
{SEC 2008-04} [Day 3 - REDACTED] {03-11-09}

265

[WITNESS PANEL: Lobdell|LaFrance]

1 possibility, let's just say, it's possible that these  
2 roads will never be revegetated down to the 12-foot  
3 wide area. Because, if it was, let's say, seven or  
4 eight years down the road, you had to clear-cut them  
5 out again to bring in a crane or a blade or something  
6 like that, then, you know, maybe five or six or seven  
7 years after that you had to do it again, there would be  
8 a continual process of cutting these. So, you would  
9 never really see them grow back to where they were  
10 pre-construction?

11 A. (LaFrance) That's correct. The only thing I would add  
12 to that is, if we had a disturbance footprint that was  
13 100 feet wide in construction, if we had to go back, we  
14 would only have to cut an area wide enough to get the  
15 Goldhofer or the crane or the piece of equipment that  
16 we need through. So, we wouldn't be going all the way  
17 back to day one. But, you're right, we'd have to widen  
18 that 12-foot to something wider than that.

19 Q. There was a lot of discussion on how this was going to  
20 operate in the field in your job, and you stated you  
21 don't have "stop work" authority, but you could maybe  
22 have "stop payment" authority, to some extent. So,  
23 you're going to have -- your engineer is going to be in  
24 the field, sort of overseeing or observing the Project  
{SEC 2008-04} [Day 3 - REDACTED] {03-11-09}

266

[WITNESS PANEL: Lobdell|LaFrance]

1 then?

Exhibit D

GRP-DAY4.txt

1

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3  
4 March 13, 2009 - 10:08 a.m.  
5 Public Utilities Commission  
6 21 South Fruit Street  
7 Concord, New Hampshire DAY 4

8  
9 In re: SITE EVALUATION COMMITTEE:  
10 SEC DOCKET NO. 2008-04:  
11 Application of Granite Reliable  
12 Power, LLC, for a Certificate  
13 of Site and Facility for the  
14 Granite Reliable Power  
15 Windpark in Coos County, New  
16 Hampshire.

17  
18 PRESENT: SITE EVALUATION COMMITTEE:  
19 Thomas B. Getz, Chrmn. Public Utilities Commission  
20 (Chairman of SEC Subcommittee - Presiding)  
21 Donald Kent Dept. of Resources & Econ. Dev.  
22 Glenn Normandeau, Director Fish & Game Department  
23 Robert Scott, Director DES - Air Resources Division  
24 Christopher Northrop N.H. Office of Energy & Planning  
William Janelle Dept. of Transportation  
Michael Harrington Public Utilities Commission

25 \* \* \*  
26  
27 Counsel for the Committee: Michael J. Iacopino, Esq.

28 COURT REPORTER: Steven E. Patnaude, LCR No. 52

29

2

1 APPEARANCES:

2 Reptg. Granite Reliable Power, LLC,  
3 and Noble Environmental Power:  
4 Douglas L. Patch, Esq. (Orr & Reno)  
Susan S. Geiger, Esq. (Orr & Reno)

Reptg. Counsel for the Public:  
Page 1

12 on who's conducting the post-construction bird and bat  
13 studies?

14 A. (Lyons) Those would be conducted by Fish & Game or  
15 their designee.

16 DR. KENT: Thank you.

17 CHAIRMAN GETZ: Mr. Harrington.

18 MR. HARRINGTON: Yes.

19 BY MR. HARRINGTON:

20 Q. I almost hate to get back this, but back to the 12-foot  
21 road thing, on section 5. It says in there that,  
22 "After project construction the roadway shall be  
23 revegetated so that the roadbed is limited to 12 feet  
24 in width." And, just sort of going as a follow-up to  
{SEC 2008-04} [Day 4] {03-13-09}

80

[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 the questions I asked yesterday, I'm assuming that, if  
2 it's required to perform maintenance two, three, four,  
3 ten, fifteen years down in time, that the road will  
4 have to be widened in order to allow the -- as  
5 necessary, to allow the trucks, cranes, spare rotors,  
6 whatever, in?

7 A. (Lyons) Just as necessary.

8 Q. Just as necessary. Okay. And, it also says the word  
9 here there will be "no commercial timber harvesting".  
10 So, if you widen the road, then does that mean that  
11 whatever wood is cut down will just be left where it  
12 goes or can you collect it and sell it?

13 A. (Lyons) No. The intent there was that the trees would  
14 not be cut down for the purpose of commercial timber  
15 harvesting.

16 Q. Okay. Thanks. That answers that question. Going down

10 Q. And, how do they compare with the two facilities that  
11 Ms. Linowes asked you about the other day, the  
12 Mountaineer Project in West Virginia and the Buffalo  
13 Mountain Project in Tennessee?

14 A. (Gravel) Much lower.

15 Q. Okay. I believe that, in response to questions from  
16 Ms. Linowes, you agreed with her that there are some  
17 poor studies out there on bird and bats, but that you  
18 put a lot of effort into your studies and that you  
19 stand behind your result. Is that your testimony?

20 A. (Gravel) Yes.

21 Q. Okay. Now, how is your -- what is your understanding  
22 about how revegetation will be accomplished for this  
23 Project?

24 A. (Pelletier) In general, the road construction will  
{SEC 2008-04} [Day 4] {03-13-09}

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 occur as it's needed, to get up and get the Project  
2 built. And, following that, the roadbed will be  
3 essentially closed and -- to a 12-foot opening, that  
4 there will be, on the roadbed itself, will be wood  
5 grindings, course material, and kind of an organic  
6 matter would be mixed with some soil amendments, as  
7 it's available. But, essentially, built up so you got  
8 a bed that can retain some moisture, provide some  
9 organic material, and support planned establishment out  
10 there. And, again, it's aimed at species like balsam  
11 fir, because balsam fir really regenerates well on just  
12 that kind of a soil material, that kind of a duff, and  
13 essentially let that go. And, should there be a need  
14 for maintenance later on that can't be handled by the

15 equipment, and, again, I believe something we didn't  
16 talk about before, was some of this equipment can be  
17 broken down. It's not necessarily always going to be a  
18 big crane, but some of these cranes are broken down to  
19 smaller components and brought up. But, given that  
20 maintenance has to happen in the -- over the long term,  
21 that that area that's got the vegetation will basically  
22 be cleared to allow that equipment to be up, and then  
23 allowed to regrow again.

24 Q. And, could you provide us with your understanding of  
{SEC 2008-04} [Day 4] {03-13-09}

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[WITNESS PANEL: Pelletier|Gravel|Lyons]

1 what type of monitoring will occur for invasive  
2 species?

3 A. (Pelletier) My understanding is that monitoring is  
4 required under the -- for the wetland mitigation  
5 aspects of the Project.

6 Q. Okay.

7 A. (Pelletier) Purple loosestrife, you know, species that  
8 are common to taking over some disturbed wetlands.

9 Q. Okay. I believe the other day we were referencing the  
10 -- I believe I referenced it with Mr. Lobdell, the  
11 letter from you, Mr. Gravel, to Mr. Decker, regarding  
12 the rare plant surveys that were conducted at the  
13 Project site. Are you familiar with that letter?

14 A. (Gravel) Yes.

15 Q. Do you know whether that letter was ever sent to the  
16 New Hampshire Natural Heritage Bureau?

17 A. (Gravel) Yes. I believe it was sent to the Natural  
18 Heritage Bureau, and it was referenced in their  
19 November 13th progress report.

15 Game Department is a party to that, you're satisfied  
16 with the terms and conditions of the High-Elevation  
17 Mitigation Plan in general, correct?

18 A. (Staats) That's correct.

19 A. (Kelly) Correct.

20 Q. And, do you believe that the Project's, notwithstanding  
21 the High-Elevation Mitigation Plan, do you believe that  
22 the Project's plans for restoration activities along  
23 side the road cuts on Mount Kelsey and Dixville are  
24 adequate?

{SEC 2008-04} [Day 4] {03-13-09}

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[WITNESS PANEL: Kelly|Staats]

1 A. (Staats) There's no question that I would agree that we  
2 want to see those roads brought to that 12-foot width  
3 if possible. And, there has been some discussion  
4 regarding seeding versus planting of trees and so  
5 forth, and certainly our preference would be to see  
6 that revegetate with natural vegetation, preferably  
7 spruce or -- preferably balsam fir and spruce, you  
8 know, from seedlings from the site, that are endemic to  
9 that site, so -- versus introducing grasses that are  
10 perhaps non-native. There aren't grasses there to  
11 begin with. So, we don't want -- you know, we'd have  
12 concern about introducing grasses to the site, to  
13 revegetate the road edges at those high elevations.

14 A. (Kelly) And, I would just add to that that grasses can  
15 significantly inhibit the recolonization of that site  
16 by trees. So, it would compound the effect for that  
17 reason.

18 Q. Okay. Now, there was some testimony this morning, or I  
19 believe Mr. Pelletier agreed with me that, to restore