

Orr&Reno

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July 9, 2021

Via Hand Delivery and Email

Dianne Martin, Chair and Presiding Officer
New Hampshire Site Evaluation Committee
c/o New Hampshire Public Utilities Commission
21 South Fruit St., Suite 10
Concord, NH 03301-2429

Re: SEC Docket No. 2021-03 - Joint Petition for Approval of the Transfer of Membership Interests in BAIF Granite Holdings LLC and Granite Reliable Power, LLC to Tusk Wind Holdings III, LLC – Supplemental Motion for Protective Order and Confidential Treatment

Dear Ms. Martin:

Enclosed for filing in the above-captioned matter is a Supplemental Motion for Protective Order and Confidential Treatment. The Joint Petitioners are requesting confidential treatment of two attachments to a response to a data request from Counsel for the Public. We are including with this filing one unredacted hardcopy of the confidential materials and one thumb drive containing those confidential materials in a separate enveloped stamped "CONFIDENTIAL". The other paper and electronic copies have redacted versions of these materials.

Thank you for your assistance. Please let us know if you have any questions.

Sincerely,



Douglas L. Patch

DLP/eac
Attachments

cc. Service list in SEC Docket No. 2021-03

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**THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2021-03

Joint Petition for the Approval of the Transfer of Membership Interests in BAIF Granite Holdings, LLC and Granite Reliable Power, LLC to Tusk Wind Holdings III, LLC

**UNASSENTED TO SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER AND
CONFIDENTIAL TREATMENT**

NOW COME BAIF U.S. Renewable Power Holdings LLC (“Brookfield Seller”), Freshet Wind Energy LLC (“Freshet”) and Tusk Wind Holdings III, LLC (“Tusk”) (collectively, “Joint Petitioners”), by and through their respective undersigned attorneys, and respectfully request that the Site Evaluation Committee (“SEC” or “Committee”) issue a protective order to preserve the confidentiality of the information described below which has been submitted as attachments to a response to a data request from Counsel for the Public. In support of this Motion, the Joint Petitioners state as follows:

Introduction

1. The Joint Petitioners have entered into a purchase and sale agreement (“PSA”) for the purpose of the transferring the membership interests in Granite Reliable Power, LLC (“GRP”) to Tusk. GRP is the owner of a 99-megawatt wind powered electric generating facility located in Coos County, New Hampshire (“the Facility”) which holds a certificate of site and facility issued by the Committee (“the Certificate”). On May 3, 2021 the Joint Petitioners submitted a petition seeking the Committee’s approval of the transfer of ownership of GRP to Tusk. At that time the Joint Petitioners submitted a Motion for

Protective Order and Confidential Treatment seeking confidential treatment of the PSA and the pro forma statement of Tusk's assets and liabilities. The Joint Petitioners incorporate by reference herein all of the arguments made in that Motion. On July 6, 2021, the Chairwoman of the Committee issued a Procedural Order and Notice of Adjudicative Hearing in this docket which included deadlines for responses to data requests. In response to one of the data requests from Counsel for the Public, Tusk is submitting copies of two attachments for which it is now requesting confidential treatment. These two attachments are forms for the Operation and Maintenance Agreement ("O&M Agreement") and Administrative Services Agreement ("ASA") (collectively the "Confidential Information") which NextEra Energy Partners, LP ("NEP") will enter into upon closing with an indirect, wholly-owned subsidiary of NextEra Energy Resources, LLC for the Facility. Tusk is an indirect, wholly-owned subsidiary of NEP.

2. The Joint Petitioners submit that the O&M Agreement and the ASA constitute confidential, proprietary, competitively sensitive commercial and financial information that should be protected from disclosure and granted confidential treatment under RSA 91-A:5, IV. Unredacted paper copies of the Confidential Information have been marked "Confidential" and have been provided to Counsel for the Public and submitted to the Committee in an envelope clearly marked "Confidential." In addition, a thumb drive with the Confidential Information has been submitted to the Committee and has also been clearly marked "Confidential."

Legal Standard

3. Although governmental records as defined by RSA 91-A:1-a are generally made available for public inspection pursuant to RSA 91-A:4, there are exemptions from such public disclosure for records pertaining to confidential, commercial or financial information, and other files whose disclosure would constitute an invasion of privacy. *See* RSA 91-A:5, IV and N.H. Admin. R. Site 104.01(b)(Committee records are available for public inspection upon a determination by the presiding officer or Chairperson that such requested documents are not exempt from disclosure pursuant to RSA 91-A:5).
4. The SEC applies the three-step analysis articulated by the New Hampshire Supreme Court in *Lambert v. Belknap County*, 157 N.H. 375, 382-383 (2008) when deciding whether information should be exempt from public disclosure under RSA 91-A:5, IV. *See Order on Motion for Protective Order and Confidential Treatment and Supplemental Motion for Protective Order and Confidential Treatment*, SEC Docket No. 2019-02 (May 8, 2020).
5. The first prong of the SEC's analysis is to determine if the petitioner has identified a privacy interest. *Id.* at 3. If a privacy interest is invoked, then the SEC must determine whether there is a public interest in disclosure. *Id.* Disclosure should inform the public of the activities and conduct of the government; if it does not serve that purpose, then disclosure is not required. *Id.* Lastly, even if the SEC determines that there is a public interest in disclosure, that interest must be balanced against any privacy interests in nondisclosure. *Id.*

Analysis/Argument

6. The Confidential Information clearly satisfies the first prong of the above-stated test for nondisclosure. The Confidential Information contains information that is commercially sensitive and proprietary, and is not disclosed publicly. The electricity generation and related markets are intensely competitive, and market participants like the Joint Petitioners safeguard this type of information to insure that it is not disclosed to the public or to one another for various reasons, many of which relate to preserving their negotiating positions in future commercial transactions, and maintaining their competitive edge by keeping information about their internal operations and administrative processes from their competitors. The SEC has expressly recognized that commercially sensitive proprietary information which will place an entity at a competitive disadvantage may be the subject of a protective order. *Order on Motion for Protective Order and Confidential Treatment*, SEC Docket No. 2018-03, (November 30, 2018) at 3-4. Accordingly, the Joint Petitioners have identified a legitimate privacy interest with respect to the Confidential Information.
7. There is little, if any, public interest in disclosure of the Confidential Information, as such disclosure will not inform the public of the Committee's conduct. The Committee's function in this docket is limited to determining whether Tusk possesses the financial, technical and managerial capability to own and operate the Facility in continuing compliance with the terms and conditions of its Certificate. *See Decision and Order Approving the Transfer of Ownership Interests in Antrim Wind Energy, LLC*, SEC Docket No. 2018-03 (Feb. 15, 2019) at 3. For the reasons discussed below, even if there is a public interest in disclosing the Confidential Information, that interest is outweighed

by the harm to the Joint Petitioners that would result from disclosure. While public disclosure of the O&M Agreement and the ASA (which contain information concerning how the Facility will be operated and maintained, and the administrative services that will be provided once the transaction is completed), may arguably reveal information relating to the Committee's determination of Tusk's financial, managerial and technical capabilities, the O&M Agreement and the ASA should nonetheless be accorded protective treatment and not be publicly disclosed. The O&M Agreement and the ASA are highly confidential documents that contain commercially sensitive information relating to, among other things, confidential business and operational terms. Disclosure of this information would certainly place Tusk and its affiliates at a competitive disadvantage. Thus the harm in disclosing the O&M Agreement and the ASA greatly outweighs what little, if any, public interest in disclosure that may exist.

8. The SEC has previously protected from public disclosure and accorded confidential treatment to a services agreement, and allowed the confidential information to be provided only to Counsel for the Public. *See Order on Outstanding Motions*, SEC Docket No. 2012-01 (Aug. 22, 2012) at 4.
9. In view of the foregoing, the Joint Petitioners submit that Committee should issue an order that exempts the Confidential Information from public disclosure and that protects its confidentiality in the manner set forth below.
10. Counsel for the Public, Senior Assistant Attorney General K. Allen Brooks, has been contacted regarding this Motion, and takes no position at this time.

Requests for Relief

WHEREFORE, the Joint Petitioners respectfully request that the Committee:

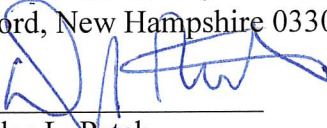
- A. Issue a protective order that treats the Confidential Information described above as confidential, allows Counsel for the Public to retain the Confidential Information for purposes of this docket and to treat the Confidential Information with confidentiality, and directs that Counsel for the Public shall not use the Confidential Information for any purpose other than for the preparation for, and participation in, the proceedings in this docket; and
- B. Grant such additional relief as the Committee deems appropriate.

Respectfully submitted,


Tusk Wind Holdings III, LLC

By Its Attorneys,

Orr & Reno, P.A.
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By: 

Douglas L. Patch
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By: 

Susan S. Geiger
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**BAIF U.S. Renewable Power Holdings LLC, a
Delaware Limited Liability Company**

By Its Attorneys,

Preti Flaherty

P.O. Box 9546
Portland, ME 04112-9546

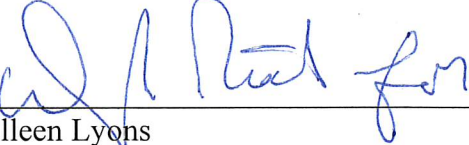
By: 

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Freshet Wind Energy LLC, a Delaware Limited Liability Company

By Its Attorneys,

Sheehan Phinney Bass & Green PA
1000 Elm Street, 17th Floor
Manchester, NH 03101

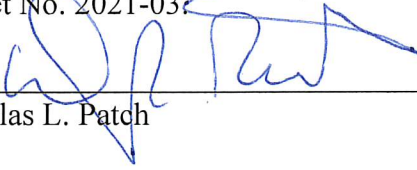
By: 

Colleen Lyons
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clyons@sheehan.com

July 9, 2021

Certificate of Service

I hereby certify that a copy of the foregoing Motion has on this 9th day of July, 2021 been sent electronically to the service list in SEC Docket No. 2021-03:

By: 

Douglas L. Patch

FORM OF AGREEMENT

OPERATION AND MAINTENANCE AGREEMENT

Dated as of August [*], 2021

between

Granite Reliable Power, LLC

and

NextEra Energy Operating Services, LLC

ADMINISTRATIVE SERVICES AGREEMENT

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