

# Orr&Reno

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July 23, 2021

**Via Email Only**

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 – Draft of Decision and Order**

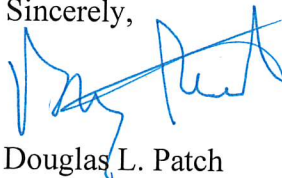
Dear Ms. Martin:

Enclosed for filing with the New Hampshire Site Evaluation Committee is a draft of a proposed Decision and Order in the above-captioned matter. This was discussed during the prehearing conference and noted in the Report of Prehearing Conference. We are providing this in the hope that it may help the Subcommittee in its deliberations and resolution of this matter. We are providing a word version of the document to the Subcommittee's counsel.

If you have any questions, please do not hesitate to contact me.

Thank you for your assistance.

Sincerely,



Douglas L. Patch

DLP/eac  
Enclosure

cc (via email): Service List in SEC Docket 2021-03

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**STATE OF 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**

**DECISION AND ORDER APPROVING TRANSFER OF MEMBERSHIP INTERESTS  
IN GRANITE RELIABLE POWER, LLC**

BAIF U.S. Renewable Power Holdings LLC, Freshet Wind Energy LLC, and Tusk Wind Holdings III, LLC filed a Joint Petition on May 3, 2021 seeking approval from the Site Evaluation Committee under RSA 162-H to transfer membership interests of BAIF Granite Holdings LLC and Freshet Wind Energy LLC in Granite Reliable Power, LLC to Tusk Wind Holdings III, LLC. Granite Reliable Power, LLC owns and operates the 99-megawatt wind-powered electric generating facility located in Coos County, New Hampshire. Granite Reliable Power, LLC holds the Certificate of Site and Facility granted in July of 2009 (SEC Docket No. 2008-04). The Site Evaluation Committee's authority to consider the issue raised in this docket is set forth at RSA 162-H:4 and RSA 162-H:5, I.

**General Appearances**

TUSK WIND HOLDINGS III, LLC  
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## Introduction

In their Joint Petition, BAIF U.S. Renewable Power Holdings LLC (Brookfield Seller), Freshet Wind Energy LLC (Freshet) and Tusk Wind Holdings III, LLC (Tusk or the Buyer) (referred to herein jointly as Petitioners) seek approval from the Site Evaluation Committee (Committee) to transfer membership interests in Granite Reliable Power, LLC (GRP) to Tusk. GRP owns and operates the 99-megawatt (MW) wind-powered electric generating facility located in Coos County, New Hampshire (the Facility) and holds the Certificate of Site and Facility originally granted to Noble Environmental Power, LLC (Noble or the Applicant) in July 2009 (SEC Docket No. 2008-04) (the Certificate). At that time Noble owned a 75% share of the membership interests in GRP and Freshet owned 25%. Noble's membership share was later transferred to Brookfield Seller, after the Committee approved the transfer (SEC Docket No. 2010-03) (February 2011). Brookfield Seller subsequently obtained a portion of Freshet's ownership interest in GRP, resulting in the current ownership shares of 89.50% and 10.50%, respectively.

The Facility consists of: (1) thirty-three (33) Vestas V-90 wind turbines, each with a nameplate rating of three (3) MW, for a total nameplate capacity of ninety-nine (99) MW; (2) an electrical substation with a nearby maintenance building and lay down yard; (3) an interconnection switching station; (4) a collection line; (5) an electrical interconnection line; and (6) approximately twelve (12) miles of what were new roads at the time of construction, as well as approximately nineteen (19) miles of upgraded existing access roads. The Facility is located in Coos County in the unincorporated places of Dixville, Ervings Location, Millsfield and Odell, and the incorporated town of Dummer.

Any proposed change in ownership of GRP in which Brookfield Seller or one of its affiliates will no longer maintain a controlling interest in GRP is subject to the approval of the Committee. This requirement is set forth as General Conditions 4 and 5 to the Certificate; it was reiterated by the Committee in its February 8, 2011 Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC, SEC Docket No. 2010-03. The Petitioners seek Committee approval to transfer all ownership interests in GRP to Tusk.

Tusk is an indirect, wholly-owned subsidiary of NextEra Energy Partners, LP ("NEP"). NEP is a growth-oriented limited partnership formed in 2014 to acquire, manage, and own contracted clean energy projects. NEP and NextEra Energy Resources, LLC ("NEER") jointly own a NEP subsidiary, NextEra Energy Operating Partners, LP, which owns interests in 4,855 MW of wind generating facilities and 975 MW of solar generating facilities. NEP's current equity value is approximately \$12 billion and its total enterprise value is approximately \$21 billion. NEP is currently rated Ba1/BB/BB+ by Moody's, Standard & Poor's, and Fitch, respectively, and has demonstrated ready access to the capital markets. NEP is also a party to a Management Services Agreement with an indirect, wholly-owned subsidiary of NEER, under which operational, management, and administrative services are provided to NEP under the direction of the NEP Board of Directors, including managing NEP's day-to-day affairs. Some of NEER's indirect, wholly-owned subsidiaries have entered into operation and maintenance service agreements with NEP to provide these operational and maintenance services to NEP's solar and wind project companies.

## History of the Project and Reasons for the Relief Sought

SEC review of the Project began in July of 2008, when Noble submitted an application for a certificate of site and facility. The SEC opened Docket 2008-04 and began a review process as required by RSA 162-H and the SEC administrative rules. That process was thorough, methodical, and open to full public participation. Counsel for the Public was appointed by the Attorney General under RSA 162-H:9 and participated throughout the proceeding. A number of parties were granted intervenor status, including individual landowners, Clean Power Development, the Appalachian Mountain Club (AMC), the Industrial Wind Action Group, and the New Hampshire Wind Energy Association. The SEC unanimously granted the Certificate on July 15, 2009. *Decision Granting Certificate of Site and Facility with Conditions*, SEC Docket No. 2008-04 (July 15, 2009).

The SEC's permitting process produced a comprehensive set of permit requirements and conditions applicable to the construction and operation of the Facility, including wetlands, alteration of terrain, and water quality conditions; conditions that incorporated the Agreement between Coos County and the Applicant; decommissioning conditions; conditions based on the Agreement between the Town of Dummer and the Applicant; conditions based on a High Elevation Mitigation Settlement Agreement among the Applicant, the AMC and the New Hampshire Fish and Game Department; and additional conditions imposed by the SEC.

After the Certificate was issued, but before the Facility was constructed, Noble and Brookfield Holdings submitted a joint petition requesting approval of the transfer of Noble's membership interest in GRP to Brookfield Holdings. This transfer was approved after an approximately two-month review process. *Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC*, SEC Docket No. 2010-03 (February 8, 2011). Construction of the Facility was completed in 2012, and the Facility entered commercial operation on February 15, 2012.

In March of 2014 GRP filed a Motion to Amend the Certificate seeking to amend the High Elevation Mitigation Settlement Agreement to allow for a modification to access roadbed widths on Mt. Kelsey necessitated by maintenance requirements of the wind turbines located there. The SEC opened Docket No. 2014-03, and granted the requested modification in an order dated February 3, 2015.

Brookfield Seller, Freshet, and Tusk have entered into a Purchase and Sale Agreement dated as of April 17, 2021 (PSA), under which both Brookfield Seller and Freshet would sell all of their membership interests in GRP, 89.50% and 10.50% respectively, to Tusk. Transfer of Brookfield Seller's and Freshet's membership interests in GRP is expressly subject to the Committee's approval. The Facility will continue to be owned and operated by GRP. GRP will continue to hold the Certificate, while Tusk will hold all membership interests in GRP following the transfer. *See*, Joint Petition, p. 2.

## Procedural History

The procedural history of this docket is as follows:

On May 3, 2021, Brookfield Seller, Freshet, and Tusk (Joint Petitioners) submitted a Joint Petition for approval to transfer membership interests in GRP to Tusk and a Motion for Protective Order and Confidential Treatment of the PSA and the pro forma statement of Tusk's assets and liabilities. Attached to the Joint Petition were a number of appendices, including the prefiled testimony of Matthew Roskot, who is a Vice President of NEP and is employed by NEER, and Gerard Nostra, who is the Wind Regional General Manager of NextEra Energy Project Management, Inc., an affiliate of NEER. The Joint Petition requested immediate appointment of a three-member subcommittee under RSA 162-H:4-a, III, and expedited review and approval of the proposed transfer of ownership interests in GRP to Tusk.

On May 20, 2021, SEC Chairwoman Dianne Martin issued a letter acknowledging receipt of the Joint Petition and indicating that it had been assigned SEC Docket No. 2021-03. On June 10, 2021 Chairwoman Martin issued an Order Convening an Adjudicative Proceeding, which established a subcommittee of three members (the Subcommittee), set a prehearing conference for June 24, 2021 to be conducted via remote video due to Covid 19 concerns, designated Counsel to the Committee, Michael J. Iacopino, to preside at the prehearing conference, and established a June 21, 2021 deadline for submission of petitions to intervene. Chairwoman Martin also issued a Notice and Agenda for Prehearing Conference on June 9, 2021, and an Order Appointing Subcommittee on June 10, 2021, which designated the three Subcommittee members.

The prehearing conference was held via remote video on June 24, 2021. No petitions to intervene were submitted prior to or during the prehearing conference. Counsel for the Petitioners and Counsel for the Public participated in the prehearing conference. During the prehearing conference the parties discussed the scope of the hearing, the motion for confidential treatment of certain information, a proposed schedule for the proceeding, the submission of a draft order, the handling of data requests from Counsel for the Public, a request that the Subcommittee proceed directly to deliberations when the adjudicative hearing is completed, and the manner in which the hearing would be conducted given the expiration of the State of Emergency.

A report of the prehearing conference dated June 28, 2021 was sent to the service list on July 6, 2021. On that same day, Chairwoman Martin issued a Procedural Order and Notice of Adjudicative Hearing. That Order set a deadline of July 6, 2021, for propounding written data requests to counsel for the Petitioners, required that the Petitioners respond in writing by July 9, 2021, and stated that further discovery, if necessary, should proceed by agreement of the parties or by motion addressed to the Presiding Officer. The Order also set the date for the adjudicative hearing as July 26, 2021, at 9AM, and noted that the Subcommittee may proceed to deliberate on the Petition immediately upon the close of evidence.

On July 9, 2021 Tusk filed a Supplemental Motion for Protective Order and Confidential Treatment seeking confidential treatment for two documents submitted in response to data requests from Counsel for the Public, *i.e.*, forms for the Operation and Maintenance Agreement and Administrative Services Agreement which NEP will enter into with an indirect, wholly-owned subsidiary of NEER once the transaction closes.

On July 23, 2021 the Presiding Officer issued an order granting the Motions for Protective Order and Confidential Treatment.

The Subcommittee held an adjudicative hearing on July 26, 2021, during which time it heard testimony of Matthew Roskot and Gerard Nostra. The Joint Petition and Appendices, and the responses to data requests from Counsel for the Public were marked as exhibits. Both witnesses were cross examined and responded to questions from Subcommittee members. After the hearing was completed, the Subcommittee proceeded directly to public deliberations.

### **Criteria for Approval of the Joint Petition**

In other dockets, the Committee has set forth and applied a standard of review for petitions requesting approval of transfer of membership or equity interests in energy facilities that have already been granted a certificate of site and facility. This standard is that the petitioners must demonstrate, by a preponderance of the evidence, that the entity acquiring the ownership interests has the financial, managerial and technical capabilities to own and operate the energy facility in question in accordance with that facility's certificate of site and facility. *See, Decision and Order in Joint Application of AES Londonderry, et al.*, SEC Docket No. 2004-1 (October 14, 2004) p. 6; *Decision and Order in Joint Application of Newington Energy, LLC, et al.*, SEC Docket No. 2008-01 (April 18, 2008) p. 4; *Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power, LLC in Joint Application by Granite Reliable Power, LLC, et al.*, SEC Docket No. 2010-03 (February 8, 2011) p. 7; *Decision and Order Approving Transfer of Ownership Interests in Granite Ridge Energy, LLC*, SEC Docket No. 2015-07 (February 3, 2016) pp.5-8; *Decision and Order Approving Transfer of Ownership Interests in Essential Power Newington, LLC*, SEC Docket No. 2016-02 (June 3, 2016) pp. 5-8; and *Decision and Order Approving the Transfer of Ownership Interests in Antrim Wind Energy, LLC*, SEC Docket No. 2018-03 (February 15, 2019) p. 3. When applying this standard, the Committee has noted that it will use the criteria spelled out in Admin. Rule Site 301.13 (a) (b) and (c) for guidance. *See Decision and Order Approving Transfer of Ownership Interests in Granite Ridge Energy, LLC*, SEC Docket No. 2015-07 (February 3, 2016) p. 7-8.

Accordingly, the Subcommittee has reviewed the financial, technical, and managerial capabilities and experience of the proposed new owner in order to determine whether the Petitioners have demonstrated, by a preponderance of the evidence, that the proposed owner possesses adequate financial, managerial, and technical capabilities to assure that the terms and conditions of the Certificate will be continuously met.

## Findings and Analysis

The Joint Petitioners seek approval to transfer all of the membership interests in GRP to Tusk. All of the membership interests of GRP are currently owned by Brookfield Seller (89.50%) and Freshet (10.50%). Brookfield Seller and Freshet have entered into the PSA with Tusk, under which all of the membership interests in GRP will be transferred to Tusk. GRP, a limited liability company formed under the laws of Delaware, will continue to be the record owner and operator of the Facility and holder of the Certificate.

In his testimony, Matthew Roskot, Vice President of NEP, who is responsible for financial planning and analysis, development and execution of the financing plan, and managing the acquisition and divestiture process, described Tusk's relationship to NEP and NEER, and the transaction that is the subject of this docket. Mr. Roskot also provided the Subcommittee with financial information in support of the Petition. As noted above, Tusk is an indirect, wholly-owned subsidiary of NEP. NEP was formed in 2014 to acquire and own clean energy projects, and through its jointly-owned subsidiary, NextEra Energy Operating Partners, LP, it owns interests in 4,855 MW of wind-powered electric generating facilities.

NEP's current equity value is approximately \$12 billion and its total enterprise value is approximately \$21 billion. The initial funding for the GRP Facility will be provided by NEP; the transaction will be funded with a combination of undrawn funds remaining of its 2020 convertible equity portfolio financing and existing debt capacity.

Mr. Roskot testified that NEP has carefully analyzed the cash flow available from GRP and determined that sales of electricity and related attributes will enable the Project to make ongoing capital investments and cover the operating costs of the Project. Mr. Roskot also testified that the current decommissioning financial assurance mechanism will be replaced with an irrevocable standby letter of credit in an amount of \$83,403.30, the amount of the current Financial Assurance Mechanism, and that GRP is prepared to periodically update this amount as the Subcommittee deems appropriate.

As the Committee has noted in prior decisions, when the Committee reviews the information presented with regard to financial capability in a docket involving the transfer of ownership of an energy facility, even though it is not technically bound by this rule in a transfer docket, it may refer to the criteria spelled out in Admin. Rule Site 301.13(a) for guidance. *See Decision and Order Approving Transfer of Ownership Interests in Granite Ridge Energy, LLC*, SEC Docket No. 2015-07 (February 3, 2016) p. 7-8. This rule allows the Committee to consider the experience of the applicant and its advisers in securing funding to operate energy facilities similar to this Facility. The rule also provides that the Committee should take into account the commitments obtained in support of the operation of the Facility, which in this case involves the commitment by NEP to provide the initial funding for the Facility. *See Site 301.13(a)(4)*.

The record also reflects that NextEra and its subsidiaries' financial reports are filed with the U.S. Securities and Exchange Commission (US SEC). The most recent Form 10-K filing, for the fiscal year ended December 31, 2020, filed with the US SEC was provided as an appendix to

the Joint Petition. The record also reflects that, accompanying its substantial experience in acquiring, owning, and managing large-scale wind-powered electric generating facilities, Tusk and its affiliates have extensive financial resources. Based on Mr. Roskot's testimony, it is clear that Tusk, through its affiliates, has access to significant financial resources. There was no evidence in the record to contradict this. In the Subcommittee's opinion the Petitioners have shown by a preponderance of the evidence that Tusk Holdings III, LLC possesses the requisite financial capability to own and operate the Facility in compliance with the terms and conditions of the Certificate.

Gerard Nostra, Wind Regional General Manager with NextEra Energy Project Management, Inc., an affiliate of NEER, offered testimony in support of Tusk's affiliates' experience and managerial and technical capability to successfully own and operate the GRP Facility in continued compliance with the terms and conditions of the Certificate. He testified that NEP is a party to a Management Services Agreement under which operational, management, and administrative services are provided to NEP through NEER affiliates. A copy of that Agreement was submitted as a hearing exhibit as an attachment to the response to a Counsel for the Public data request. That response also included confidential copies of forms for the Operation and Maintenance Agreement and Administrative Services Agreement which NEP will enter into upon closing with an indirect, wholly-owned subsidiary of NEER for the Facility. Mr. Nostra further testified that NEER is the world's largest generator of renewable energy from the wind and sun and that it operates approximately 18,000 MW of wind projects in the US and Canada, and operates approximately 126 wind projects with more than 9,800 wind turbines, including Vestas turbines similar to the GRP turbines at four other projects.

According to Mr. Nostra, once acquired, the GRP Facility will be monitored through NEER's Renewable Operations Control Center to optimize performance and control the GRP Facility's operations. This Operations Control Center operates 24 hours a day, 365 days a year, with certified transmission operators. Highly skilled and trained regional operations and maintenance staff and technicians, including on site technicians, will provide support for planned maintenance and/or unplanned outages.

As the Committee has noted in prior decisions, when the Committee reviews the information presented with regard to managerial and technical capability, even though it is not technically bound by this rule in a transfer docket, it may refer to the criteria spelled out in Admin. Rule Site 301.13(b) and (c) for guidance. See *Decision and Order Approving Transfer of Ownership Interests in Granite Ridge Energy, LLC*, SEC Docket No. 2015-07 (February 3, 2016) p. 8. These provisions allow the Committee to consider the experience and expertise of contractors engaged to provide technical and managerial support for the operation of the facility. See Site 301.13(b)(2) and (c)(2). As noted above, GRP will have a management services contract, an Operations and Maintenance Agreement, and an Administrative Services Agreement. Under these agreements, GRP will have access to the significant experience of personnel who are part of an experienced energy company with extensive involvement in the operation of wind power facilities in North America. These contractual relationships will satisfy the managerial and technical capability criteria that must be met in this transfer docket.



The record reflects that, accompanying its substantial experience in acquiring, owning, and managing large-scale wind-powered electric generating facilities, Tusk and its affiliates have extensive technical experience as well. Based on Mr. Nostra's testimony, it is clear that Tusk, through its affiliates, has broad technical and managerial experience in the operations and maintenance of wind facilities such as the GRP Facility. There was no evidence in the record to contradict this. In the Subcommittee's opinion, the Petitioners have shown by a preponderance of the evidence that Tusk Holdings III, LLC possesses the requisite managerial and technical capability to own and operate the Facility in compliance with the terms and conditions of the Certificate.

### **Conclusion**

The Subcommittee finds that the Joint Petitioners have established by a preponderance of the evidence that Tusk has adequate financial, managerial, and technical capabilities to assure the continued operation of the Facility in continuing compliance with all of the terms and conditions of the Certificate originally issued to GRP in SEC Docket No. 2008-04, as amended by SEC Docket No. 2010-03 and SEC Docket No. 2014-03. The Subcommittee is satisfied that there is sufficient evidence to show that transfer of ownership interests in GRP to Tusk and its relationship to its affiliates will ensure that the Facility remains in compliance with the terms of the Certificate. This Order does not change or modify the terms and conditions of the Certificate. The Committee maintains the authority to monitor and enforce the terms and conditions of the Certificate. See, RSA 162-H:4, I. Finally, the Subcommittee hereby decides to apply the same condition with regard to any further transfer of ownership that the Committee imposed when it approved the transfer to Brookfield seller in 2011. GRP shall not be required to obtain the written assent of the Committee in advance of any change in ownership provided that NEP, or one of its affiliates, maintains a controlling interest in GRP. Any future change in the controlling interest of GRP will be subject to the approval of the Committee.

### **Order**

Based upon the foregoing, it is hereby:

Ordered that the Joint Petition is GRANTED and the Joint Petitioners are authorized to transfer all of the membership interests in Granite Reliable Power, LLC to Tusk Holdings III, LLC; and

It is further Ordered that Granite Reliable Power, LLC is not required to obtain the written assent of the Site Evaluation Committee in advance of any change in ownership so long as Tusk Wind Holdings III, LLC or one of its affiliates maintains a controlling interest in Granite Reliable Power, LLC. However, Granite Reliable Power, LLC shall provide written timely notice of a change in non-controlling ownership interests on a timely basis to the Site Evaluation Committee; and

It is further Ordered that all of other the terms and conditions of the Certificate originally issued to Granite Reliable Power, LLC in SEC Docket No. 2008-04, as amended by SEC Docket No. 2010-03 and SEC Docket No. 2014-03 shall remain in full force and effect.

By Order of the Subcommittee appointed by the Site Evaluation Committee of New Hampshire this \_\_\_\_ day of \_\_\_\_\_, 2021, at Concord, New Hampshire.

\_\_\_\_\_  
Dianne H. Martin, Chairwoman  
Site Evaluation Committee and  
Chairwoman, Public Utilities Commission

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Daniel C. Goldner, Commissioner, Public  
Utilities Commission

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Robert A. Baines, Public Member

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