

**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 WITH CONDITIONS**

**I. Introduction**

On July 15, 2009, the Site Evaluation Committee (Committee) issued a Certificate of Site and Facility (Certificate) to Granite Reliable Power LLC (GRP) (Docket No. 2008-04.) 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, 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 new roads and approximately nineteen (19) miles of existing and upgraded access roads. The Facility is in Coos County in the unincorporated places of Dixville, Ervings Location, Millsfield and Odell, and the incorporated town of Dummer.

When first certificated, GRP was owned by Noble Environmental Power LLC (Noble) (75%) and Freshet Wind Energy LLC (Freshet) (25%). After obtaining approval from the Committee, Noble sold its interests in GRP to BAIF US Renewable Power Holdings LLC (Brookfield.) See Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC Docket 2010 - 03 (February 2011).

The owners of GRP are Brookfield, which now owns 89.5% share, and Freshet, which now owns a 10.5% share (jointly referred to as Sellers.) On May 3, 2021, Sellers,

GRP, and Tusk Wind Holdings III, LLC (Tusk) filed a Joint Petition to Transfer Membership Interests in BAIF Granite Holdings LLC and Granite Reliable Power LLC to Tusk (Petition). Tusk is an indirect, wholly owned subsidiary of NextEra Energy Partners, LP (“NEP”).

Certificates of site and facility may not be transferred or assigned without approval of the Committee. *See* RSA 162-H:5, I. Under the Certificate, any proposed change in ownership of GRP in which Brookfield or one of its affiliates will no longer maintain a controlling interest in GRP is subject to the approval of the Committee. *See* Certificate, p. 2 (third and fourth general conditions.) This condition was reiterated by the Committee in the Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC, p. 19. SEC Docket No. 2010-03. The Joint Petitioners seek Committee approval to transfer all ownership interests in GRP to Tusk.

## **II. Procedural History**

The Petition was filed on May 3, 2021. The Petition was accompanied by the prefiled direct testimony of Gerald Nostra<sup>1</sup> and Matthew Roskot<sup>2</sup> on behalf of Tusk. On June 10, 2021, the Chairwoman of the Committee issued orders appointing a Subcommittee and convening an adjudicative proceeding. On June 21, 2021, the Attorney General appointed Senior Assistant Attorney General K. Allen Brooks as Counsel for the Public. A prehearing conference was held on June 24, 2021.

Along with the Petition, the Joint Petitioners moved sought a protective order and confidential treatment of the purchase and sale agreement, Ex. JP 7 (Confidential), and the Financial Statement of GRP, Ex. JP 5 (Confidential). On July

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<sup>1</sup> The prefiled direct testimony of Mr. Nostra was attached to the Petition as Appendix C. His prefiled direct testimony was also admitted as a full exhibit, Ex. JP 3, during the evidentiary hearing. His prefiled testimony will be referred to as Ex. JP 3 in this Order.

<sup>2</sup> The prefiled direct testimony of Mr. Roskot was attached to the Petition as Appendix B. His prefiled direct testimony was also admitted as a full exhibit, Ex. JP 2, during the evidentiary hearing. His prefiled testimony will be referred to as Ex. JP 2 in this Order.

23, 2021, the Joint Petitioners filed a Supplemental Motion for Protective Order and Confidential Treatment seeking confidential treatment of the forms for an Operations and Maintenance Agreement, Ex. JP 10, and an Administrative Services Agreement, Ex. JP 11. On July 26, 2021 the Chairwoman granted both motions in part and denied them in part.

Counsel for the Public did not file a response to the Petition nor prefiled testimony. There are no intervenors in this docket. The Subcommittee has received no written public comment.

An evidentiary hearing was held on July 26, 2021. At the evidentiary hearing the Sellers proffered Mr. Nostra and Mr. Roskot for questions from the Subcommittee. The prefiled testimony was adopted by the witnesses at hearing.

### **III. The Proposed Transaction**

The proposed transaction is part of a sale of a portfolio of wind generation units, three of which are in California.

The transaction as proposed is a sale of all interest in the site and facility from Sellers to Tusk. Brookfield and Freshet will each transfer all right title and interest to the site and facility and all interests in GRP to Tusk. At the conclusion of the closing neither Brookfield nor Freshet will maintain any interest in GRP. Tusk will be the sole owner of GRP.

The Sellers and Tusk have submitted under seal a Purchase and Sale Agreement (PSA) Ex. JP 7 (Confidential) and a pro forma financial statement for GRP Ex JP 5 (Confidential.)

The PSA is a complex document that details the transaction between the selling and buying parties. The purchase price in dollars is not easily discernible from the PSA. There are conditions precedent to the sale. The PSA references the Tusk

concurrent PSA's which govern the sale of the other units in the portfolio. The inability to consummate the sale of the other units in the portfolio is a material adverse event that can terminate the PSA for GRP. *See Ex. JP 7 p. 10 (Confidential.)* Mr. Roskot, in response to questions at the evidentiary hearing testified that all components of the sale of the portfolio are moving forward towards closing.

#### **IV. Tusk Wind Holdings III, LLC**

Tusk is an indirect, wholly owned subsidiary of NextEra Energy Partners, LP ("NEP"). NEP is a limited partnership within the NextEra organization formed in 2014 to acquire, manage, and own contracted clean energy projects. NEP is a publicly traded company the majority of which is owned by NextEra subsidiaries. *See Ex. JP 4.* NEP and NextEra Energy Resources, LLC ("NEER") jointly own a NEP subsidiary, NextEra Energy Operating Partners, LP, (NEOP) which owns interests in 4,855 MW of wind generating facilities and 975 MW of solar generating facilities. NEOP is the parent company of Tusk. *See Ex. JP 4.*

#### **V. Standard of Review**

RSA 162-H: 5, I requires the Committee's approval of transfer or assignment of a Certificate to any other person or entity. *See RSA 162-H:5, I.* In addition, under the Certificate Sellers must notify the Committee of any change in ownership or ownership structure and seek approval of the Committee of such change. *See Certificate p. 2.*

Before the Subcommittee approves a transfer in ownership, the proposed owner should demonstrate by the preponderance of evidence it possesses adequate financial, managerial, and technical capabilities to assure that the conditions of the Certificate are continuously met. *See RSA 162-H:16, IV (a); see also Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC, Docket No. 2010-03 (Feb. 8, 2011); Decision and Order Approving Transfer, Newington Energy,*

LLC and North American Energy Alliance, LLC, Docket No. 2008-01 (Apr. 18, 2008). “Ongoing environmental compliance and the safe operation of the facility are of the utmost concern to the Committee and the State of New Hampshire.” *See Decision and Order Approving Transfer, Newington Energy, LLC and North American Energy Alliance, LLC, Docket No. 2008-01 (April 18, 2008).* The Committee will review the financial, technical, and managerial experience of the proposed new owner to determine whether the proposed owner possesses adequate financial, managerial, and technical capabilities to assure that the conditions of the Certificate are continuously met. *See Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC, Docket No. 2010-03 (Feb. 8, 2011).* When applying this standard, the Committee has historically relied on criteria in 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.*

## **VI. Analysis and Findings**

### **A. FINANCIAL CAPABILITY**

Under N.H. Code Admin. Rules, Site 301.13, when determining whether an applicant for a Certificate of Site and Facility has the financial capability to construct and operate the facility, the Committee considers:

- (1) The applicant’s experience in securing funding to construct and operate energy facilities similar to the proposed facility;
- (2) The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;
- (3) The applicant’s statements of current and pro forma assets and liabilities; and

- (4) Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.

N.H. Code Admin. R., Site 301.13, (a)(1)-(4) (2018)<sup>3</sup>.

The Joint Petitioners assert that the Petition, the attached exhibits, and the testimony of Mr. Roskot establish that Tusk has the financial capability to operate the facility in accord with the conditions of the Certificate.

In prefiled direct testimony Mr. Roskot testified that Tusk's parent company NEP has a current liquidity position of \$1,584 MM from which to fund the initial acquisition of GRP. In making this assertion he relied on NEP's Q-10 for the first quarter of 2021 filed on April 23, 2021. See Ex. JP 13. At the evidentiary hearing Mr. Roskot updated his prefiled testimony and reported that at the conclusion of the second quarter of 2021 NEP's liquidity position increased to \$2,200MM. NEP's year-end Annual Report (2020 10-K) contains a balance sheet demonstrating substantial cash and liquid assets. See Ex. JP 6, p. 42.

Mr. Roskot also testified that Tusk will have adequate financial capacity to operate the facility in accordance with the terms of the Certificate. He reports that NEP analyzed GRP's cash flow and "has 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." Ex. JP 2, p. 6.

Mr. Roskot also testified about the overall financial condition of NEP. He stated: "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,

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<sup>3</sup>Although the regulations address requirements that apply specifically to the applicants who seek a Certificate for Site and Facility, said regulations provide valuable guidance for determining Tusk's financial, managerial, and technical capacity to continue operation of the Facility in accordance with the Certificate.

Standard & Poor's, and Fitch, respectively, and has demonstrated ready access to the capital markets." Ex. JP 2, p. 4. He also summarized NEP's renewable energy holdings which include "4,855 megawatts 15 ("MW") of wind, 975 MW of solar, and ownership interests in 4.3 billion cubic feet (Bcf) of total natural gas pipeline capacity as of year-end 2020." Ex. JP 2, p. 4.

Mr. Roskot also testified that Tusk intends to replace the existing decommissioning financial assurance mechanism with an irrevocable stand-by letter of credit in the same amount (\$83,403.30) to cover the balance due to the fund. The Joint Petitioners, through Mr. Roskot's testimony, expressed a willingness to report an updated decommissioning estimate to the Committee on a periodic basis. See Ex. JP 2, p. 6.

During the evidentiary hearing Mr. Roskot was asked several questions regarding the status of the decommissioning fund. After a break to obtain additional information, he reported that a reasonable estimate of decommissioning costs could be based on a per-turbine removal cost of \$135,000.00 without considering salvage value. When salvage value at preset rates is considered the net cost of decommissioning each turbine is zero. The Subcommittee expressed concern that the current funding assurance in the amount of \$83,403.30 seemed low. The Joint Petitioners advised the Subcommittee that under the terms of the Certificate the decommissioning estimate and funding assurance was delegated to Coos County and the Owner of the facility. The substitute irrevocable stand-by letter of credit does not represent the total estimated cost of decommissioning. It assures payment of the balance of the decommissioning fund as established under the terms of the Certificate over a ten-year period<sup>4</sup>. After review of the decommissioning condition the

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<sup>4</sup> The substitute irrevocable stand by letter of credit assures payment of the year 10 obligation to the fund.

Subcommittee still had concerns about the decommissioning assurance.

During closing argument, Counsel for the Public noted the continuous tension between the use of single purpose entities such as GRP and Tusk and regulatory needs to maintain sufficient control over the actual entities that site, construct and operate energy facilities in the state. However, Counsel for the Public advised the Subcommittee that the NextEra organization is a known entity in New Hampshire and has extensive financial resources. Counsel for the Public also noted that the Brookfield structure is similar in its use of single purpose limited liability entities.

The uncontroverted testimony from Mr. Roskot and Mr. Nostra along with the exhibits submitted by the Joint Petitioners demonstrate by a preponderance of the evidence that Tusk as an indirect subsidiary of NEP has more than adequate financial capability to operate and maintain the GRP facility in a manner assuring that all conditions of the Certificate are met. The Joint Petitioners have provided substantial evidence that GRP generates sufficient revenue and maintains a healthy balance sheet upon which it can cover the costs of operations and make necessary capital improvements. *See* Ex. JP 2, p. 6; Ex. JP 5 (Confidential). The Joint Petitioners also provided substantial evidence that Tusk has sufficient contractual arrangements with other NextEra entities to assure continuous appropriate financial management of GRP and the facility. These include the Management Service Agreement, Ex. JP 9, the Operations and Maintenance Agreement, Ex. JP 10 (Confidential), and the Administrative Services Agreement, Ex. JP 11(Confidential.)

However, the Subcommittee remains concerned about the decommissioning fund. The decommissioning fund required by the Certificate in this docket was established before the Committee promulgated its rules for decommissioning. The rule now requires that decommissioning cost estimates be calculated without regard to



salvage value. The Subcommittee expects that Tusk will provide a full and complete estimate of the cost to decommission in accordance with Site 301.08(a)(7) to the County, with copies to the Committee, and fund the decommissioning fund in an amount consistent with the conditions of the Certificate. Tusk shall re-estimate the cost of decommissioning at least every five years and report that cost to the Committee through the Committee's administrator or the Chairperson of the Committee in the absence of an administrator. This reporting will allow the Committee to determine if the decommissioning fund is keeping pace with the estimated cost of decommissioning over time.

#### **B. TECHNICAL AND MANAGERIAL CAPABILITY**

When determining whether an applicant for a Certificate of Site and Facility, has the technical capability to construct and operate the facility, the Committee considers:

- (1) The applicant's experience in designing, constructing, and operating energy facilities similar to the proposed facility; and
- (2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time.

Site 301.13 (b)(1)-(2).

When determining whether an applicant for a Certificate of Site and Facility, has the managerial capability to construct and operate the facility, the Committee considers:

- (1) The applicant's experience in managing the construction and operation of energy facilities similar to the proposed facility; and

(2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide managerial support for the construction and operation of the proposed facility, if known at the time.

The Joint Petitioners rely on the Petition, the exhibits, and the testimony of Mr. Nostra to establish that Tusk has the technical and managerial capability to operate the facility in accord with the conditions of the Certificate.

Regarding technical capabilities the Petition asserts that NEP will contract with NEER through a Management Services Agreement, Ex. JP 9, to provide technical and managerial service for GRP. According to Mr. Nostra:

NEER is the world's largest generator of renewable energy from the wind and the sun and through its affiliates, operates and manages approximately 18,000 MW of wind across 20 states in the U.S. and 4 provinces in Canada. NEER first entered the wind generation business in 1989 with the acquisition of several existing wind projects in Southern California and today operates approximately 126 wind projects that are comprised of more than 9,800 wind turbines, including similar Vestas turbines at four other projects.

Nostra, p. 3.

Mr. Nostra testified that the GRP facility will be monitored on a 24/7/365 basis from a remote operations center (ROCC). Ex. JP 3, p.3. In addition, regional and local wind technicians will be available to operate the facility and address all maintenance and operations issues. Ex. JP 3, p. 4. At the evidentiary hearing Mr. Nostra testified that the facility will continue to be staffed by 4-5 trained local employees including a wind technician supervisor. When necessary subject matter experts and technicians will be dispatched to the facility to address specialty issues and to respond to emergencies that arise at the facility.

The Joint Petitioners rely on the managerial capacity and experience of NEER. Mr. Nostra will be employed as the Regional Wind Site Manager. Ex. JP 3, p. 4. Mr. Nostra reports to Jonathan Bain the Vice-President for Wind Operations Northern

Region for NEER. The Petition and the testimony of Mr. Nostra assert that both the management staff and technical staff are highly trained and experienced in wind turbine operations and renewable energy markets. See Ex. JP 3, p. 4.

In further support of the Petition the Joint Petitioners have proffered the Management Services Agreement, Ex. JP 9, and confidentially proffered a proposed Administrative Services Agreement between GRP and NEER, Ex. JP 11 (Confidential), and a proposed Operations and Maintenance Contract between GRP and NextEra Operating Services LLC, Ex. JP 10 (Confidential.) These commercial contracts govern how GRP and Tusk's parent companies will operate the facility and provide technical, managerial and administrative service for GRP and the facility. The Joint Petitioners assert that the contracts are further evidence of the technical and managerial resources that Tusk will have at its disposal should the Subcommittee approve the transfer.

Counsel for the Public, as noted above, did not express concerns regarding the technical or managerial capabilities of Tusk as a subsidiary of the NextEra organization. Counsel for the Public recognized NEP and NEER as companies experienced in operating and maintaining wind energy facilities and have significant technical and managerial resources to operate the GRP facility.

The Subcommittee finds that Tusk, as an indirect subsidiary of NEP, has adequate managerial and technical capability to operate and maintain the GRP facility in a manner assuring that all conditions of the Certificate are met. To date GRP, through its Brookfield parent companies, has successfully operated the facility in accord with the Certificate. Upon the transfer of GRP it will remain similarly staffed with 4-5 full-time trained local wind technicians and a supervisor. It will maintain a remote operation center that monitors the Facility on a 24-hour basis. The local

employees will have access to subject matter experts and will continue to be supported by parent companies with vast wind energy experience.

Tusk, through its parent NextEra companies brings a substantial portfolio of renewable energy experience. NEER has extensive technical and managerial experience in the operation of wind energy facilities. The Joint Petitioners have demonstrated that GRP will continue to benefit from extensive technical and managerial support through the Management Services Agreement, Ex. JP 9, the Operations and Maintenance Agreement Ex. JP 10 (Confidential), and the Administrative Services Agreement, Ex. JP 11 (Confidential.) There is no contrary evidence in the record.

### **C. Future Transfers of Interest**

The Joint Petitioners ask the Subcommittee to find that GRP is not required to obtain written assent of the Committee before any future change in ownership so long as NEP, or one of its affiliates, maintains a controlling interest in GRP. RSA 162-H:5, I, provides that “a certificate shall not be transferred or assigned without approval of the committee.” In the context of an application for a certificate of site and facility, Site 301.17(a) states that the Committee “shall consider”: “A requirement that the certificate holder promptly notify the committee of any proposed or actual change in the ownership or ownership structure of the holder or its affiliated entities and request approval of the committee of such change.” The Certificate in this case pre-dates the adoption of the rule. However, in Docket 2010-03, the Committee allowed the transfer of all interests in GRP From Noble to Brookfield. In doing so The Committee recognized that the requirement of approval of changes in ownership stems from concerns that a certificated facility remain controlled by “companies that have sufficient financial, technical and managerial capacity in order to ensure the

construction and operation of the Facility in compliance with all of the terms and conditions of the Certificate.” See Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC Docket 2010 – 03, p. 5 (February 2011). The Joint Petitioners argue that NEP, through its various affiliates, has more than sufficient financial, technical and managerial experience and assets to assure operation of the facility in accordance with the Certificate. Therefore, they seek a similar order regarding future transfers of the interests in GRP to NEP controlled entities.

The Subcommittee recognizes that occasionally the business interest of NEP may require a change in the ownership interests in GRP amongst NEP controlled companies. Therefore, the Subcommittee will approve the request of the Joint Petitioners. Any proposed change in ownership of GRP in which NEP or one of its wholly owned affiliates will no longer maintain a controlling interest in GRP is subject to the approval of the Committee. However, GRP need not seek approval of future changes in its ownership interests if NEP or one of its wholly owned affiliates maintains the controlling interest in GRP.

## **VII. Conclusion and Order**

The Joint Petitioners have established by the preponderance of evidence that Tusk Wind Holdings III, LLC has adequate financial, managerial and technical capabilities to assure the continued funding, management and operation of GRP in continuing compliance with the terms and conditions of the Certificate of Site and Facility issued to GRP in Docket No. 2008-04 and in Docket 2010-003. This is based on the representations that NextEra Energy Partners and affiliated NextEra companies will control and support the continued operation, maintenance and decommissioning of GRP and its facility. Future changes in ownership of the interests of GRP need not

be approved by the Committee so long as NEP or one of its wholly owned affiliates maintains the controlling interest in GRP. This Order does not change or modify the terms and conditions of the Certificate not amended herein. The Committee maintains the authority to monitor and enforce the terms of the Certificate. See, RSA 162-H: 4, I.

**Based upon the foregoing it is hereby:**

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

**Further Ordered** that Granite Reliable Power, LLC shall send written confirmation when the transfer has closed to the Chairwoman of the Site Evaluation Committee; and,

**Further Ordered** that any proposed change in ownership of Granite Reliable Power, LLC, in which NEP or one of its wholly owned affiliates will no longer maintain a controlling interest in GRP, is subject to the approval of the Committee. However, GRP need not seek approval of future changes in its ownership interests if NEP or one of its wholly owned affiliates maintains the controlling interest in GRP. In such cases GRP shall provide notice of the change within fourteen (14) days of such a transfer.

Granite Reliable Power LLC shall also provide written notice of any change in the non-controlling ownership interests of Tusk Wind Holdings III, LLC or Granite Reliable Power, LLC to the Site Evaluation Committee within fourteen (14) days of such a transfer; and,

**Further Ordered** that NextEra Energy Partners, LP and its affiliates shall ensure that Granite Reliable Power, LLC and Tusk Wind Holdings III, LLC, comply with all terms and conditions of the Order and Certificate of Site and Facility issued in Site Evaluation Committee Docket Nos. 2008-04, 2010-03 and 2014 – 03; and

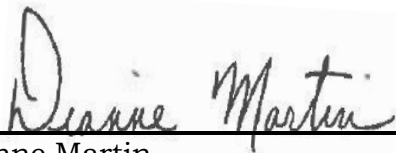
**Further Ordered** that NextEra Energy Partners, LP and its Affiliates shall be subject, along with Tusk Wind Holdings III, LLC and Granite Reliable Power, LLC, to the enforcement jurisdiction of the Site Evaluation Committee; and,

**Further Ordered** that Granite Reliable Power, LLC, Tusk Wind Holdings III, LLC and NextEra Energy Partners, LP, shall maintain their current addresses, telephone numbers and other contact information on file with the Administrator of the Committee and absent an administrator with the Chairperson of the Committee;

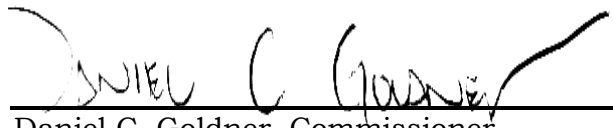
**Further Ordered** that Granite Reliable Power, LLC, Tusk Wind Holdings, LLC and NextEra Energy Partners, LP shall immediately notify the Committee if they or any parent company or affiliate files a bankruptcy or insolvency petition in any jurisdiction, foreign or domestic, or is forced into involuntary bankruptcy or any other proceeding pertaining to insolvency, or the liquidation of assets; and,

**Further Ordered** that all conditions of the Order and Certificate of Site and Facility issued on July 15, 2009, in Site Evaluation Committee Docket No 2008-04 as amended shall remain in full force and effect.

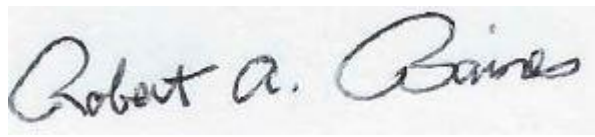
By Order of the Site Evaluation Committee this seventeenth day of August, 2021.



Dianne Martin  
Chairwoman and Presiding Officer  
Site Evaluation Committee



Daniel C. Goldner, Commissioner  
Public Utilities Commission



Robert Baines  
Public Member