

June 7, 2010

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*Via Electronic Mail and Hand Delivery*  
NH Site Evaluation Committee  
c/o Jane Murray, Secretary  
29 Hazen Drive, P.O. Box 95  
Concord, NH 03302-0095

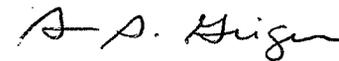
**Re: Application of Groton Wind, LLC –  
SEC Docket No. 2010-10**

Dear Ms. Murray:

Enclosed for filing with the Site Evaluation Committee in the above-captioned matter, please find an original and 3 copies of the Applicant's Response to Intervention Petitions and Requests.

Please contact me if you have any questions about the enclosed filing.  
Thank you.

Very truly yours,

  
Susan S. Geiger

Maureen D. Smith  
(Of Counsel)

cc: Via Electronic Mail to Service List (exclusive of Committee members)

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

**Docket No. 2010-01**

**RE: APPLICATION OF GROTON WIND, LLC  
FOR A CERTIFICATE OF SITE AND FACILITY  
FOR A RENEWABLE ENERGY FACILITY IN GROTON, NH**

**APPLICANT'S RESPONSE TO INTERVENTION PETITIONS AND REQUESTS**

NOW COMES Groton Wind, LLC ("the Applicant") by and through its undersigned attorneys and respectfully responds to the intervention petitions and requests filed by various persons and entities in the above-captioned matter by stating as follows:

1. The Order and Notice of Pre-Hearing Conference, Site Visit and Public Information Hearing issued on May 21, 2010 by Subcommittee Chairman Getz in the above-captioned matter states that any person interested in participating as a party in this proceeding is required to file a Petition to Intervene pursuant to RSA 541-A:32 and N.H. Admin. Rule Site 202.11 on or before June 4, 2010.

**Petitions To Intervene**

2. On May 6, 2010, the undersigned received via electronic mail from Jane Murray, Secretary to the New Hampshire Site Evaluation Committee ("SEC"), a Petition to Intervene filed on behalf of the Town of Groton. The undersigned also received a hard copy of the above-referenced Petition via U.S. Mail.

3. On June 1, 2010, the undersigned received via electronic mail from Ms. Murray a copy of a Petition to Intervene filed on behalf of the Town of Rumney. The undersigned also received a hard copy of the above-referenced Petition via U.S. Mail.

4. The Applicant does not object to the intervention petitions filed by the Towns of Groton and Rumney.

**Letters and Electronic Mail Requesting Intervention**

5. On May 19, 2010, via electronic mail from Ms. Murray, the undersigned received copies of the following correspondence:

a. A letter from Rumney resident Annie Valmandis addressed to Jane Murray requesting “to apply for Intervenor Status.” In support of the request, the letter merely states: “[b]ecause Rumney will be greatly impacted by the Iberdrola wind turbines, I am very concerned and wish to be added to the list of interested parties.”

b. An electronic mail message from Rumney resident Lawrence Mazur to Commissioner Burack requesting “permission to intervene pro se” and further requesting that permission to participate in all phases of this proceeding be afforded to all members of his Rumney household, including Sarah M. Mazur, Christine G. DeClercq-Mazur, Theodore G. Mazur and Lawrence A. Mazur. The electronic mail message states the following reasons for the intervention request: “sustantial (sic) interest demonstrability which will be affected by proceeding outcome, inadequacy to protect such interest by other parties, no alternative means available to protect such interests, desire that the interest of justice be served and hope that no impairment of orderly and prompt proceedings conduct (sic) be misconstrued by such intervention.”

c. A letter from Rumney resident Richard Wetterer addressed to Commissioner Burack requesting “permission to intervene pro se.” The letter states that Mr. Wetterer is a property owner and resident on Route 25 in Rumney less than 1 mile from the proposed wind farm.

d. An electronic mail message from Richard Wetterer containing a letter from Kathleen Park addressed to Commissioner Burack requesting “to apply for intervenor status.” The letter states that Ms. Park is a concerned citizen of Rumney who lives on Route 25 less than a mile from the 5 turbines proposed for Fletcher Mountain and that the proximity of the towers “greatly threatens my health and even my life.”

6. On May 25, 2010, SEC Counsel Iacopino forwarded to the undersigned an electronic mail message he sent to Lawrence A. Mazur, M.D., Sarah M. Mazur, Christine G. DeClercq-Mazur, Theodore G. Mazur, Richard Wetterer, Kathleen Park, Anne Valdmanis and Lisa Linowes. Attorney Iacopino’s message to the above-named individuals referenced and attached the provisions of RSA 541-A:32 and the SEC’s procedural rules regarding intervention. In addition, the message noted the requirements for intervention petitions and explained that copies of such petitions should be sent to all parties on the service list. The message also recognized that the individuals had requested intervenor status via e-mail or other correspondence, and respectfully urged the individuals to file a more formal motion stating with specificity the facts that demonstrate their interests in this proceeding.

7. On June 1, 2010, via electronic mail message from Ms. Murray, the undersigned received a copy of a letter from Rumney residents Christine G. DeClercq-Mazur and Sarah M. Mazur<sup>1</sup> addressed to Commissioner Burack seeking to “apply for intervenor status.” The letter states that the Mazurs are Rumney residents and claim to be abutters<sup>2</sup> to the Project. Their concerns include: views, health effects, noise, vibrations, reverberations, low frequency soundwaves, shadowflicker, lightflicker, forest fires, ice throws, metalfatigue, falling property values and increasing electricity prices.

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<sup>1</sup> These individuals are named in Lawrence Mazur’s electronic mail message referenced in paragraph 5.b. above as members of his household.

<sup>2</sup> Upon information and belief, the Mazur residence is on Quincy Road which does not abut the Project site.

8. On June 2, 2010, the undersigned received via electronic mail from Rumney resident Richard Wetterer a copy of a message to Commissioner Burack indicating Mr. Wetterer's request for intervenor status. In support thereof, Mr. Wetterer indicated that he lives and works on Route 25 in Rumney and claims he will be less than 1 mile from the wind turbines proposed for Fletcher Mountain. He indicated concern about the possibility of noise pollution from the Groton Wind Project and its potential impacts on health and safety, the value of his property, tourism, his well water, and his quality of life.

9. On June 3, 2010, Rumney resident Cheryl Lewis sent an electronic mail message to Vice Chairman Getz with copies to Ms. Murray, Attorney Iacopino and Attorney Douglas Patch seeking intervention in this docket. Ms. Lewis did not copy the undersigned on this electronic mail message. In her intervention request, Ms. Lewis indicates that her property abuts the Baker River as well as Quincy Road. She also asserts that her business (a campground) "will be significantly impacted by the potential destruction of the environment" and "by noise heard from the turbines."

10. On June 3, 2010, the undersigned received via electronic mail from Ms. Murray a copy of a letter from Rumney resident James Buttolph addressed to Chairman Burack petitioning for intervention. Reasons stated by Mr. Buttolph in support of his petition include concerns that the Project will impact the view from his property and the value of his property. He also states concerns about the possible adverse impacts on the health of the residents in the setback areas.

11. On June 3, 2010, the undersigned received via electronic mail from Ms. Murray a copy of an electronic mail message addressed to Chairman Burack from Rumney resident Carl Spring asking to be recognized as an intervenor. The message expresses concerns about the Project's effects on the health of Mr. Spring's family and his farm animals, his water supply, his

land value, traffic from the Project and the negative effect on his family due to “loss of peace and quiet both short and long term.”

**Standard for Granting Intervention Petitions and Conditions that May be Imposed**

12. The standard for granting a petition for intervention is set out in the Committee’s rules, N.H. Admin. Rule Site 202.11, and RSA 541-A:32, I. The Committee’s rules require that a person seeking to intervene must file a petition “with copies served on all parties identified in the....notice of hearing”. Site 202.11(a). Under paragraph (b) of Site 202.11, the presiding officer must grant a petition to intervene if:

- (1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer’s order of notice of the hearing, at least 3 days before the hearing;
- (2) The petition states facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

RSA 541-A:32, I contains virtually identical provisions.

13. The Applicant recognizes that in the past the Committee has interpreted RSA 541-A:32, II as authorizing it to allow petitions for intervention that do not meet the standard under RSA 541-A:32, I if the Committee finds that the broader interests of justice support intervention and the intervention would not interfere with the orderly and prompt conduct of the proceeding. *See Order on Petition of Lisa Linowes to Intervene, Re: Community Energy Inc. and Lempster Wind, LLC, Site Evaluation Committee Docket No. 2006-01.* The Applicant respectfully submits that reading this statute more consistently with the Committee’s new rules and the language of RSA 541-A:32 is appropriate. The Applicant believes that the discretionary nature of RSA 541-A:32, II is temporal rather than plenary, i.e. it is limited to late-filed intervention petitions which must otherwise meet the requirements of RSA 541-A:32, I. *See RSA 541-A:32,*

II (“presiding officer may grant one or more petitions for intervention *at any time*”[emphasis added]). Under this interpretation, the first paragraph of RSA 541-A:32 sets forth the standard that is to be used to determine whether to allow an intervention, while the second paragraph sets forth the standard to be used, in conjunction with the first paragraph, in determining whether to allow a late request for intervention. In other words, the language of RSA 541-A:32, II only comes into play if the request for intervention is late-filed. This interpretation is in fact supported by the Committee’s recently enacted rules which appear to limit the Presiding Officer’s authority for granting intervention petitions filed pursuant to RSA 541-A:32, II to those that are “late-filed”. See N.H. Admin. Rule Site 202.11(c). Accordingly, in order to grant requests for intervention, the Presiding Officer must always make findings that the parties seeking intervention meet all of the intervention standards under RSA 541-A:32, I (i.e. that the petitions have been filed more than 3 days prior to the hearing with copies mailed to all parties, that the petition states facts demonstrating rights, duties, privileges, or other substantially affected interests, and that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing intervention.) The Applicant believes that the discretionary provisions of RSA 541-A:32, II should, as the Committee’s rules provide, only be invoked in the event that a petition for intervention is late-filed and respectfully suggests that the Committee interpret this statutory provision in this way.

14. The issues raised by Ms. Valdmanis, the Mazurs, Mr. Wetterer, Ms. Park, Ms. Lewis, Mr. Buttolph and Mr. Spring in support of their intervention requests do not qualify them for intervention in this matter. Their issues and concerns are no different than those faced by other members of the public. None of these individuals are direct abutters (i.e. located within ¼ mile of impact areas, let alone being actual abutting property owners) of the Groton Wind Project.

See Application, Volume II, Appendix I, Appendix D (Abutter's Map & Notifications). As such, any concerns that these individuals have can be adequately presented to the Committee through Public Counsel, who is required to represent the views of the public. See RSA 162-H:9.

Accordingly, these intervention requests should be denied. See *Application of Laidlaw Berlin BioPower, LLC*, Site Evaluation Committee Docket No. 2009-02, Order on Pending Motions (March 24, 2010), pp. 5-6 (denying intervention request of individual having no substantial interest in the docket that differs from the interests of the public at large.) In addition, the Town of Rumney has sought intervention in this docket and, if granted, the Town (through its Board of Selectmen and Attorney) can adequately represent the views and interests of the residents of Rumney.

15. Even assuming for the sake of argument that these individuals did meet the standards for intervention under RSA 541-A:32, I. (a) and (b), in order to grant their intervention requests, the Presiding Officer must also determine that the interests of justice and the prompt and orderly conduct of the proceedings would not be impaired by allowing intervention. See RSA 541-A:32, I. (c). The Applicant asserts that such a finding cannot be made in this case. On the contrary, allowing these individuals to intervene will very likely impair the prompt and orderly disposition of these proceedings. As the record in this case demonstrates, none of the initial intervention request letters/electronic mails were sent by the filing party to the undersigned. In addition, Dr. Mazur has engaged in at least one *ex parte* communication (via electronic mail dated June 2, 2010) with Committee members even after being informed by Ms. Murray (via an electronic mail message dated May 28, 2010) that such communications are improper. At the present time, there is simply no assurance that these individuals will adhere to the Commission's procedural rules and applicable statutes. Moreover, their participation as full parties with the rights to

propound data requests, submit testimony, cross-examine witnesses and attend technical sessions will likely bog down the process and therefore will not promote the prompt and orderly disposition of these proceedings, and could prevent the Committee from concluding its deliberations and issuing its order within the timeframe for renewable energy facilities established in RSA 162-H:6-a. Allowing these Rumney citizens to participate either through Public Counsel or the Town of Rumney is therefore more likely to promote the prompt and orderly conduct of the proceedings than granting intervenor status to any one or all of them.

16. The Applicant notes that the above-named individuals may express their concerns to the Committee in this proceeding without the need for formal intervention. More specifically, they can use the mechanism available to all members of the public under RSA 162-H:10, III, which provides: "The site evaluation committee...shall consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings." The Committee's rules also provide for submission and consideration of views of all members of the public. *See* Site 202.25.

#### **Intervention Conditions**

17. In the event that the Presiding Officer decides to allow any or all of the intervention requests made by the above-named individuals, the Applicant would respectfully request that the Committee order that their participation in these proceedings be consolidated. The Committee is expressly authorized to "compel consolidation of representation for such persons as have, in the committee's reasonable judgment, substantially identical interests." RSA 162-H:9, II. Based on the information contained in their intervention requests, it appears that all of the above-named

individuals' interests are substantially identical and therefore warrant that their participation be consolidated, if intervention is granted.

18. Site 202.11(d) requires the Presiding Officer to impose conditions on intervenors' participation in the proceeding "if such conditions promote the efficient and orderly process of the proceeding." Such conditions include: limiting intervenor participation to designated issues; limiting intervenors' use of cross examination and other procedures; and requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination and other participation in the proceeding. *See* Site 202.11(d)(1)-(3). RSA 541-A:32, III contains similar provisions. In the event that the Presiding Officer grants the individual intervention requests and consolidates the intervenors' participation, the Applicant respectfully urges that such participation be limited to the issues designated in the intervention requests, that cross examination, presentation of evidence and argument, and participation in technical sessions be conducted by only one individual on behalf of the consolidated intervenors and that data requests (if any) be limited to the designated issues of interest and be propounded to the Applicant all together in one set.

#### **Additional Intervention Issues**

19. The Applicant believes it is important that all intervenors and members of the public wishing to participate via public comment understand the distinction between being an intervenor and having the right to provide comments or information. The Applicant also believes it is important that all potential intervenors understand the role that Public Counsel plays in the proceeding, as a spokesperson and resource for members of the public, as well as the opportunity members of the public have to be placed on the docket's mailing list to receive copies of information related to the proceeding. Finally, the Applicant believes that it is

important that potential intervenors be aware of the opportunity they have to express their views and submit information to the Committee. Accordingly, the Applicant respectfully requests that the Presiding Officer inform all interested persons and parties of the foregoing.

20. The Applicant respectfully asks the Presiding Officer to impress upon all parties who are granted intervention that they have the responsibility of insuring that all committee orders, rules, statutes and processes are followed. This includes adhering to the *ex parte* laws, meeting the deadlines established by the Committee, being accurate and truthful in all filings, and sending copies of all filings to the service list. If the Presiding Officer does not make all the parties aware of these responsibilities and that they will be enforced, the Applicant fears that the prompt and orderly conduct of this proceeding will be impaired.

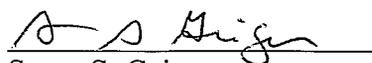
Wherefore, for the reasons stated above, the Applicant respectfully requests that the Presiding Officer:

- A. Deny the intervention requests submitted by the above-named individuals;
- B. In the alternative, in the event that the above-referenced intervention requests are granted, order that the participation of the above-named individuals in this proceeding be consolidated and conditioned as indicated above; and
- C. Take such additional action as may be appropriate.

Respectfully submitted,

Groton Wind, LLC

By Its Attorneys

  
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Dated: June 7, 2010

Certificate of Service

I hereby certify that, on the date written below, I caused Applicant's Response to Intervention Requests to be sent by electronic mail or U.S. mail, postage prepaid, to the persons on the service list.

6/7/10

Date

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Susan S. Geiger