

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
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August 4, 2010

NH Site Evaluation Committee
c/o Jane Murray, Secretary
29 Hazen Drive, PO Box 95
Concord, New Hampshire 03301-0095

Re: Application of Groton Wind, LLC
Docket No. 2010-01

Dear Ms. Murray:

Enclosed for filing with the New Hampshire Site Evaluation Committee with reference to the above-captioned matter please find an original plus three copies of *Counsel for the Public's Response to Applicant's Partial Objection to Motion of Counsel for the Public for Leave to Retain Consultants*.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Manuela Perry".

Manuela Perry
Paralegal II
Environmental Protection Bureau
(603) 271-3679

/MP
Enclosure
cc: Service List

3. In paragraphs 2B, 2C, and 2D of the Partial Objection, Applicant argues the proposed studies are unnecessary and unreasonable, and would be in violation of RSA 162-H: 10, V. Public Counsel notes that the Applicant has made no objection to Public Counsel's request "to provide expert analysis and opinion concerning noise emissions . . . and a critique of the methodology and results of the consultants employed by the Applicant."

4. The purpose of the work proposed by Mr. Tocci, and presented by Counsel for the Public as Exhibit B to the Motion, is to assess and critique the Applicant's experts' methodology and results. The studies proposed to be done by Mr. Tocci will allow him, and by extension, the Committee, to determine the accuracy of the Applicant's experts' measurements of ambient background noise levels surrounding the proposed project site. The point of such studies is to re-measure the Applicant's data points. The results of Mr. Tocci's studies will not be excludable as unduly repetitious evidence.

5. Applicant objects to permitting Mr. Tocci to measure sound levels at two additional sites. Assuming the Committee approves Mr. Tocci's proposed field measurements, the marginal cost of assessing two more locations would be negligible. Further, measuring sound data at two locations which were not chosen by the Applicant would assist public counsel and the Committee in checking the accuracy and appropriateness of the Applicant's data.

6. Applicant objects to Mr. Tocci's proposal to measure ambient sound levels during the winter. Applicant bases this objection partially on sound data from the Lempster Mountain Wind Farm. The Committee cannot rely on data measured at Lempster Mountain. Variability in landforms, vegetative cover and development

necessitate an independent assessment at each site. In addition, as noted by Mr. Tocci in Exhibit B to Public Counsel's Motion, ambient sound levels surrounding the proposed project site may be lower during the winter. The winter measurements proposed by Mr. Tocci are necessary to assess whether this is true. These studies are reasonable and necessary for public counsel and the Committee to fully assess the Applicant's application, and determine the increase in sound levels that will be due to the proposed project.

7. Applicant also argues, in paragraph 2E of the Partial Objection, the cost of Mr. Tocci's services is excessive and unreasonable. Applicant requests that "[i]n the event that the Committee authorizes Counsel for the Public to retain Mr. Tocci, it should also limit the amount that the Applicant must pay . . . to no more than \$10,000[.]"

8. As indicated in Exhibit B of the Motion, Mr. Tocci's scope of work includes the costs of preparation for and participation in the hearing process. These costs include sound analysis and surveying, preparation of written prefiled testimony, and attendance at technical sessions. It also includes preparation for asking questions of the Applicant's experts and answering any technical questions received from the Applicant.

9. It is misleading to compare the total estimated cost of Mr. Tocci's services to the costs incurred so far by the Applicant for its own experts. The Applicant, as indicated in paragraph 2E of the Partial Objection, has incurred expenses in the amount of \$10,000 for "sound analysis and survey submitted in support of its Application." This does not include providing testimony, attending technical sessions, or attending the hearing for cross-examination.

10. In addition, the amount of money spent by the Applicant so far on sound studies is not relevant to public's counsel's motion. The Committee must approve or deny public counsel's request to retain Mr. Tocci on its own merits, without regard to how much the Applicant has spent or will spend.

Respectfully submitted,

EVAN J. MULHOLLAND
COUNSEL TO THE PUBLIC

By his attorneys,

MICHAEL A. DELANEY
ATTORNEY GENERAL

Date: August 4, 2010



Evan J. Mulholland, Assistant Attorney General
Environmental Protection Bureau
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Concord, NH 03301
(603) 271-3679

I hereby certify that I caused the foregoing to be served on each of the parties on the attached Service List.

DATED: August 4, 2010



Evan J. Mulholland

SERVICE LIST

Docket No. 2010-01

Application of Groton Wind, LLC

Sub-Committee Members

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<p>Brook Dupee, Bureau Chief Department of Health and Human Services Division of Public Health Services 29 Hazen Drive Concord, NH 03301 bdupee@dhhs.state.nh.us</p>	<p>Richard Boisvert (designee) State Archaeologist NH Division of Historical Resources 19 Pillsbury St., 2nd Floor Concord, NH 03301-3570 richard.a.boisvert@dcr.nh.gov</p>
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Committee Members Not on Sub-Committee

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Parties

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