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June 6, 2011

Via Hand Delivery and Electronic Mail

NH Site Evaluation Committee
c/o Jane Murray, Secretary
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

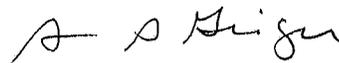
***Re: Docket 2010-01, Application of Groton Wind, LLC
for a Certificate of Site and Facility for a Renewable Energy Facility***

Dear Ms. Murray:

Enclosed for filing with the Site Evaluation Committee in the above-captioned docket, please find an original and three copies of the Applicant's Contested Motion for Reconsideration and/or Rehearing.

Please contact me if there are any questions about this filing. Thank you for your assistance and cooperation.

Very truly yours,



Susan S. Geiger

cc: Service List (electronic mail only)

Enclosure
768348_1.DOC

THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

Docket No. 2010-01

**Re: Application of Groton Wind, LLC
For A Certificate of Site and Facility**

**APPLICANT'S CONTESTED MOTION FOR RECONSIDERATION
AND/OR REHEARING**

NOW COMES Groton Wind, LLC (“Groton Wind” or “the Applicant”) and, pursuant to NH RSA 162-H:11, NH RSA 541:3, NH RSA 541:4, and N.H. Code Admin. Rule Site 202.29, and respectfully moves for reconsideration and/or rehearing with respect to the portions of the Order and Certificate of Site and Facility with Conditions (“the Order”) and the Decision Granting Certificate of Site and Facility with Conditions (“the Decision”) issued May 6, 2011 by a Subcommittee of the New Hampshire Site Evaluation Committee (“the Subcommittee”) that deal with post-construction avian and bat species monitoring and surveys (“post-construction bird and bat conditions” or “the conditions.”)¹ In addition, if the Applicant’s Motion for Clarification filed May 13, 2011 (which is expressly incorporated by reference herein) has not been granted before the Subcommittee rules on the within Motion, the Applicant respectfully moves for reconsideration and/or rehearing of the portion of the Order that requires the Applicant to file an interconnection agreement prior to the commencement of construction. In support of this Motion, Groton Wind states as follows:

¹ These conditions are set forth in the Order at page 4 and in the Decision at pages 70-71.

Standard for Granting Motion

1. Under NH RSA 541:4, a party moving for rehearing of a decision or order must “set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.” N.H. Code Admin. Rule Site 202.29(d)(2) also requires that a motion for rehearing describe how each error causes the decision to be an abuse of discretion or arbitrary. As explained more fully herein, the Decision and Order are unlawful, unreasonable, an abuse of discretion, and arbitrary for several reasons. The conditions are unreasonable and arbitrary because they are not based on the record evidence, are excessive, unprecedented, are not scientifically-based and are unreasonably expensive. The Decision and Order are unlawful and an abuse of discretion because they violate RSA 162-H:16, II, which requires that a certificate of site and facility be issued “based on the record.” More specifically:

A. The post-construction bird and bat conditions are not supported in any way by record evidence. They were not proposed or supported by any party to the proceeding, nor the state and federal agencies charged with protection of avian and bat species (the New Hampshire Fish and Game Department [“NHFG”] and United States Fish and Wildlife Service [“USF&WS”]).

B. The post-construction bird and bat conditions were developed in reliance upon “extra-record” information that was not introduced as evidence in the proceeding. Data contained in the 2010 Lempster Post-Construction Mortality Report, (which was not introduced because it had not been finalized and approved for release by the Lempster Technical Committee at the time of hearings) was apparently a foundation of the deliberations regarding avian and bat conditions. The data from this report appears to have

been misunderstood and mischaracterized, and neither the Applicant nor any other party had the opportunity to testify or even comment upon this “extra-record” information.

C. Lastly, the Subcommittee’s deliberations relied on the USF&WS “draft Land-Based Wind Energy Guidelines” introduced by Counsel for the Public at the March 22, 2011 hearing as Exhibit PC 22. These draft guidelines were issued by the February 18, 2011 USF&WS Federal Register notice that was submitted as Exhibit PC 21. However, it is important to note that the Federal Register notice comprising Exhibit PC 21 was corrected by a subsequent Federal Register notice issued by USF&WS on March 2, 2011 [FR, Vol. 76, No. 41, p. 11506], a copy of which is attached to this Motion. In the attached corrected notice, USF&WS clearly states that a correction to the February 18th notice was being issued “because we believe it gave the erroneous impression that draft Guidelines are ready for public use.” Thus, because USF&WS has clearly stated that the draft guidelines are not for public use, and do not supersede USF&WS’s 2003 interim, voluntary guidance, it was unlawful for the Subcommittee to have relied upon the draft guidelines in developing the bird and bat conditions in this docket.

2. N.H. Code Admin. Rule Site 202.29(e) provides that a motion for rehearing shall be granted if it “demonstrates that the committee’s decision is unlawful, unjust or unreasonable.” RSA 541:3 authorizes the Subcommittee to grant a rehearing request when the moving party shows good reason for such relief. This may be demonstrated by identifying specific matters that were either “overlooked or mistakenly conceived” or by new evidence that was not available at the original hearing. *Dumais v. State*, 118 N.H. 309 (1978). As explained more fully below, good reason exists for rehearing the post-construction bird and bat conditions because the Subcommittee overlooked two pieces of

significant record evidence (i.e. the 2009 Lempster Post-Construction Mortality Report² and the Stantec Bird and Bat Risk Assessment³) which support the Applicant's position that the Project's risk to birds and bats does not warrant the onerous and excessive post-construction conditions imposed by the Subcommittee.

The Post-Construction Bird and Bat Conditions Contained in the Decision and Order Overlook Important Record Evidence and Are Therefore Unreasonable and Arbitrary

3. The Decision, at pages 62 to 63, purports to list the Applicant's studies "conducted in or related to the project area." However, two important exhibits are omitted from that list. The Subcommittee has overlooked two pieces of significant evidence that relate to the issue of the Project's risks to birds and bats and the related issue of whether that risk warrants the post-construction bird and bat conditions imposed.

4. The Subcommittee overlooked the 2009 Lempster Post-Construction Fatality Surveys Report⁴. This report is in the record (*see* Ex. App. 5, Tab 53), yet it was not even mentioned in the Decision and Order. More troubling is that the Subcommittee's deliberations mistakenly assert that this report "was never available." Tr. 4/7/11 Afternoon Session, p. 36, lines 14-15. Significantly, Subcommittee Member Kent, who led the deliberations regarding the bird and bat conditions, stated that he had not seen the 2009 Lempster Report. Tr. 4/7/11 Afternoon Session, p. 94, lines 5-6. This misstep alone is sufficient cause to warrant a rehearing. However, in addition to that error, the Subcommittee also overlooked the Stantec Bird and Bat Risk Assessment ("Stantec Risk

² The 2009 Lempster report is contained in Ex. App. 5 (Supplement to Application Volume I-A), Appendix 53.

³ The Stantec Bird and Bat Risk Assessment is contained in Ex. App. 4, Appendix 28.

⁴ The report is dated September 30, 2010, however a cursory review of its Executive Summary reveals that the report contains 2009 data.

Assessment”) contained in Ex. App. 4, Appx. 28. This comprehensive document was not mentioned in either the Decision or Order. No party presented any evidence to rebut or challenge these important documents. The Subcommittee’s failure to acknowledge or consider these two documents is unfortunate as answers to many of the questions posed by the Subcommittee during its deliberations are found within them. These oversights contributed to Subcommittee confusion and the flawed analysis that led to the creation of the unreasonable and arbitrary bird and bat conditions that are the subject of this Motion.

5. In its justification for requiring that the Applicant repeat – and exceed – all pre-construction surveys during the first three operational years of the Project, the Subcommittee finds on page 69 of the Decision that “the issue is not merely how many birds or bats have been killed by the Facility, but what effect the Project has on the bat and bird populations in the region.” During deliberations, the Subcommittee erroneously concluded that without repeating and exceeding all preconstruction surveys during the operational phase that “we simply don’t know what it means when we find dead stuff.” Tr. 4/7/11 Afternoon Session, p. 93, lines 7-9. However, the 2009 Lempster fatality report, which has been reviewed and approved by the Lempster Technical Committee whose members include representatives of USF&WS, NHFG, the New Hampshire Attorney General’s Office, and others, concludes that “results of 2009 monitoring **do not suggest the potential for population level impacts** from the project.” (Emphasis added.) *See* Ex. App. 5, Tab 53, p. 41. Because the 2009 Lempster report was overlooked, the Subcommittee made erroneous assumptions regarding the usefulness and purposes of mortality surveys, i.e. it failed to acknowledge that those surveys can and do provide

information regarding population level impacts. Thus, it is unnecessary to replicate and exceed the pre-construction surveys as the Subcommittee has directed.

6. Without citing to scientific authority or record evidence, page 69 of the Decision asserts that “one or even two years of formal scientific monitoring is insufficient to properly gauge the effect of the Project on avian species from one year to the next because bird and bat populations may vary from year to year...” The Subcommittee relied on this baseless assumption in requiring a minimum of three years of post-construction studies. Additionally, the deliberations (at Tr. 4/7/11 Afternoon Session, p. 56, lines 13-20) imply that if the Subcommittee had information to assure that post-construction study results do not vary from year to year, the Subcommittee may have reached a different conclusion about the need for the extensive post-construction studies it ordered. Had the Subcommittee examined the 2009 Lempster Fatality Study, as well as Mr. Gravel’s Supplemental Prefiled Testimony (Ex. App. 5, Tab Adam J. Gravel, pp. 14 to 16), the Subcommittee could have concluded that the record clearly demonstrates that there is very little reason to suspect that impacts at the Groton Project would be any different than at Lempster. For example, on page 14 of his Supplemental Prefiled testimony, Mr. Gravel states that: *“Since the filing of the Groton Wind Project’s Application and my prefiled testimony in March 2010, results of post-construction fatality surveys at the nearby Lempster Wind Project have been reported. The report of the survey results is contained in Appendix 53.”* Further, on pages 15 and 16 of his Supplemental Prefiled Testimony, Mr. Gravel provides comparisons between Lempster 2009 data and 2010 raw data, noting that:

A total of nine birds were found during the 2009 searches, one of which was found during the spring period. An additional four birds were found incidentally. ...In the spring of 2010, two birds were found...No birds were found

incidentally during the spring 2010 surveys. In the fall of 2010, a total of eight birds have been found to date.

No raptors were found during either of the 2009 or 2010 fatality searches. A total of ten bats were found during the 2009 searches, one of which was found during the spring period. ...An additional two bats were found incidentally. ...In the fall of 2010, a total of 17 bats have been found to date; 11 bats were found in September (hoary and silver-haired bats). **These results show similar trends to other post-construction fatality searches** and that the majority of fatalities observed occurred during the fall migration period. (Emphasis added.)

The Subcommittee's failure to consider the 2009 Lempster Fatality Report led Subcommittee deliberations to erroneously conclude that "there seemed to be some suggestion that the [post-construction mortality] numbers differed from the first year." Tr. 4/7/11 Afternoon Session, p. 56, lines 9-11.

7. The Stantec Risk Assessment contained in Ex. App. 4, Appx. 28 detailed all of the publicly available pre- and post-construction results from proposed and operational wind energy projects throughout the northeast from 2004 to present. Despite varying levels of pre-construction bird and bat activity among projects, not one project documented results that were significantly different from one another. Even though pre-construction results varied among projects, post-construction mortality rates at these projects were consistently within the same range. Perhaps the most important information contained in the Assessment is that: fatalities of migrating songbirds across all projects were considered to be low and not a significant impact to populations; raptors were the lowest among the various species groups with many projects (including Lempster) documenting zero raptor fatalities; and although the magnitude of bat fatalities varied across projects, the timing of fatalities was very similar and the lowest number of fatalities occurred in New England. In short, despite variations in pre-construction surveys results year to year, the record in this docket clearly reveals that post-construction mortality results have been consistent across

wind farms in the northeast United States. In light of this evidence which the Subcommittee overlooked, multiple years of post-construction surveys simply are not needed, and have not been requested by NHFG or USF&WS for Groton.

8. Page 70 of the Decision states that there is “no evidence to establish environmental congruity between the Groton site and other wind turbine sites in the northeast.” This statement is incorrect as it overlooks uncontroverted testimony contained on page 16 of Mr. Gravel’s Supplemental Prefiled Testimony, lines 6-18, where Mr. Gravel directly addresses the issue of the similarity between the Groton and Lempster sites noting:

The Lempster Project is located approximately 39 miles southwest of the Groton Project and is similar in elevation, land use, habitat, and the orientation of the ridgeline. Both the Groton and Lempster Projects are relatively low elevation forested ridges; the highest elevation found in the Lempster Project is approximately 2300’ and the highest elevation in the Groton Project is approximately 2250’. Both project areas are managed for forestry products, and have experienced past and recent timber harvesting. The side-slopes of these project areas are dominated by varying age classes of northern hardwood forests and the summits of these project areas are dominated by red spruce. Due to the ecological similarities between the two sites, available habitat for passerines, raptors and bats at these sites is similar. In addition, the Lempster Project uses the same type of wind turbines as proposed for the Groton project. Based on the foregoing, it is expected that post-construction impacts to birds and bats at the Groton Project will be similar to those at the Lempster Project, which I would characterize as not unreasonably adverse.

Additionally, the Stantec Risk Assessment (which was not discussed during the deliberations, in the Decision, or in the Order) analyzes the Groton Wind Project’s risks to birds and bats through qualitative weight-of-evidence technique and, in fact, answers many of the questions posed by the Subcommittee during deliberations. It is based on literature review, agency consultation, regional surveys and databases, and on-site field surveys that characterize use of the Project area by raptors, nocturnally migrating passerines, breeding birds and bats. Significantly, Appendix B of the Stantec Risk Assessment contains

multiple years of data relating to bird counts in the region, raptor mortality data at wind farms (from 1994-2009), comparisons of bird mortality at several (16) existing wind farms in the eastern and mid-western United States, and comparison of bat mortality at several (16) existing wind farms in the eastern and mid-western United States. This analysis by the Applicant's expert witness was not contested by any party nor was it contradicted by any other evidence during the proceedings.

9. Page 69 of the Decision notes that the Applicant has suggested "post-construction population and mortality studies are unnecessary because of *the degree of the impact of the Facility may be established by comparisons with mortality rates from other wind projects in the northeast.*" (Emphasis added.) The Decision then rejects the Applicant's argument on the theory that "each site has its own unique geographic, biological and environmental features." Decision, p. 70. This conclusion is flawed because it overlooks the fact that the Applicant's position is not based upon a simple, numerical comparison of fatalities from multiple projects. Instead, the Applicant relies upon the Stantec Risk Assessment which does more than just compare fatality statistics; it assesses degree of impact from a much more complex system denoted as the Weight of Evidence ("WOE") approach which also takes into account probability of an impact. The WOE approach:

simultaneously evaluates multiple, diverse survey methods and considers the strengths and weaknesses of each. Level of risk for each species or group evaluated is predicted by taking into account its abundance in the Project area, the likelihood of exposure to wind turbines, and patterns of impact to the particular species or group, as documented at existing wind projects. The WOE approach was selected for this risk assessment because it is well suited to make the most appropriate use of a variety of types of data with ranging quality and applicability, and was identified as a frequently used method in a draft document prepared by the National Wind Coordinating Committee (NWCC) on the applicability of ERA to wind projects (Kunz 2007b). Ex. App. 4, Appx. 28, pp. 1-2.

Thus, the Stantec Risk Assessment demonstrates that post-construction data from different sites can, in fact, be used to form the basis of expert opinions regarding the degree and nature of a proposed wind project's anticipated impacts on birds and bats. Importantly, there is no evidence in the record (expert or otherwise) that undercuts or in any way refutes the Stantec Risk Assessment.

10. The Subcommittee's failure to consider the Stantec Risk Assessment may have directly contributed to the Subcommittee's arbitrary conclusion that several years of post-construction surveys and monitoring are needed because there is not enough record evidence to support the Applicant's position that its post-construction plans (consisting of at least one year of formal post-construction mortality surveys and lifelong project monitoring as described in Iberdrola's Avian and Bat Protection Plan) are appropriate. Transcripts of the Subcommittee's deliberations reflect the misimpression that the record lacks information regarding studies of fatalities at other wind projects (e.g. the Stantec Risk Assessment) that could be used to assess the risk at the Groton Project. *See* Tr. 4/7/11, Afternoon Session, pp.112-113 ("[t]here are a lot of resources out there...What ones are we using for comparison, and how do we know that that constitutes no adverse impact? None of that was proffered to us during testimony...we don't know what projects we're comparing to. We don't even know many—if there's enough projects in the forested northeast to compare it to yet that have data. None of that was offered to us. There's no basis for making a comparison that's been offered to us.") These statements clearly show that data in the Stantec Risk Assessment, especially the information found in Appendix B, Tables 4 and 6 concerning bird and bat mortality rates at 16 wind farms, was overlooked.

It is apparent that the Subcommittee's mistaken view that there was no evidence upon which to assess Groton Wind Project's risk to birds and bats contributed in some way to the formulation of the stringent and excessive post-construction conditions to which the Applicant objects. Therefore, good reason exists for the Subcommittee to grant this motion so that it can examine the evidence that it overlooked and reconsider the post-construction bird and bat conditions.

The Post-Construction Avian and Bat Conditions Contained in the Decision and Order are Unlawful and an Abuse of Discretion

11. RSA 162-H:16, II requires that the Subcommittee's certificate be issued "based on the record." Thus, certificate conditions that are not based on the record (e.g. those based upon "extra-record" evidence and those that are not supported by record evidence) are unlawful and an abuse of discretion.

12. A review of the deliberations transcripts as well as the record reveals that there is no record evidence to support the post-construction bird and bat conditions. The post-construction bird and bat conditions go well beyond the type and number of studies recommended by the Applicant's and Public Counsel's experts combined, as well as by any party to the proceeding. The conditions also exceed those approved by the New Hampshire Fish and Game Department, whose expertise is precisely in these matters. These important points were underscored by the Subcommittee's deliberations, during which Subcommittee Member Harrington correctly noted that the Subcommittee was "going well beyond what we have evidence in the record to support." Tr. 4/7/11 Afternoon Session, p. 143, lines 19-20. Mr. Harrington further stated that the conditions go "beyond what any of the witnesses that we had on the stand [said]...either the Applicants or Public Counsel... so there would

be no chance to question this or cross-examine this.... I think it just goes too far.” Tr. 4/8/11 Morning Session, p. 8, lines 3-8. Subcommittee Member Steltzer commented similarly in voting against the conditions: “I’m just concerned with the level of studies that are being done here versus what I perceive the risk to actually be. I think this is excessive.” Tr. 4/8/11 Morning Session, p. 8, lines 12-15. Thus, the absence of record evidence supporting the post-construction bird and bat conditions renders them unlawful. *See* RSA 162-H:16, II.

13. The post-construction bird and bat conditions are unlawful because they were developed, in part, in reliance upon information that was not part of the record in this proceeding. The transcript of the Subcommittee’s deliberations on the post-construction bird and bat conditions clearly indicates that the Subcommittee relied on “extra-record” evidence in developing these conditions. Deliberations refer to the “2010 Lempster report.”⁵ Tr. 4/7/11 Afternoon Session, p. 56, lines 8-9. The reference to 14 bat fatalities “in the second year” clearly reveals reliance on 2010 Lempster post-construction data (which is not in the record), and not the 2009 data (relating to the first year of Lempster’s operation) contained in the record at Ex. App. 5, Appendix 53. Thus, inasmuch as the Subcommittee considered information that is not contained in the record of this proceeding, the post-construction bird and bat conditions are unlawful. *See* RSA 162-H:16, II.

14. At the time of hearings, the *draft* 2010 Lempster Post-Construction Fatality report was under review by the Lempster Technical Committee (which includes representatives of NHFG, USF&WS and the New Hampshire Attorney General’s Office). Pursuant to the terms of the Agreement governing the Lempster Technical Committee’s

⁵ It is assumed that the Subcommittee was referring to a draft of the 2010 Lempster Post-Construction Fatality Survey which was not yet a public document or entered into the record.

work, reports of post-construction fatality studies are not to be released outside of the Technical Committee until the Technical Committee approves them. However, raw data may be released to requesting parties. The Technical Committee approved the *final* report and publicly released it on April 27, 2011, after the evidentiary hearings in this docket had concluded. As noted in paragraph 6 above, Mr. Gravel's Supplemental Prefiled Testimony referenced the raw (and incomplete) 2010 data. However it is clear that that information is not what was discussed during deliberations. The deliberations transcripts in this docket contain different (complete year) numbers, indicating that the Subcommittee (or some Subcommittee members) apparently obtained a copy of the *draft* 2010 Lempster report (or data contained in it) before it had been approved and released by the Lempster Technical Committee. Had the Subcommittee wished to consider the draft 2010 Lempster report in developing its bird and bat conditions in this case, it could have taken official notice of the document in accordance with RSA 541-A:33, V during the course of the proceeding. However, that action requires notice to all of the parties and an opportunity for them to contest the material so noticed. *See* RSA 541-A:33, VI. Because the Subcommittee failed to provide the parties with the fundamental due process disclosure and discussion opportunities required by RSA 541-A:33, VI for the proper consideration of the draft 2010 Lempster Report, the post-construction bird and bat conditions are unlawful.

15. The conditions are also unlawful because they were based on draft federal guidance documents which are not intended for public use. As indicated in paragraph 1. C., above, on March 2, 2011, USF&WS issued a Federal Register notice stating that the draft Guidelines were not intended for public use and that the agency will publish the "final Guidelines for public use after consideration of any comments received." *See* Federal

Register/Vol. 76, No. 41/Wednesday, March 2, 2011 (attached.) Furthermore, the notice states that the 2003 voluntary draft guidelines remain in effect.

16. A certificate of site and facility may contain only “reasonable terms and conditions”. *See* RSA 162-H:16, VI. As explained below, the post-construction bird and bat conditions are unreasonable. Thus, to the extent that the certificate of site and facility contains unreasonable terms and conditions, it violates RSA 162-H:16, VI, and is therefore unlawful.

The Post-Construction Avian and Bat Conditions Contained in the Decision and Order are Unreasonable and Arbitrary

17. The post-construction bird and bat conditions are unreasonable for several reasons: they are not supported by the record evidence, are excessive, unprecedented, are not science-based (and therefore are unnecessary), and are unreasonably expensive.

A. The SEC has never imposed such stringent post-construction bird and bat conditions on any other energy project that it has certificated, wind projects or otherwise.

B. As discussed above, the Subcommittee’s finding that “one or even two years of formal scientific post-construction study is insufficient to properly gauge the effect of the Project on avian species from one year to the next because bird and bat populations may vary from year to year due to the weather conditions, environmental conditions, and other factors” (*Decision*, p. 69) is fundamentally flawed because it is not based on scientific evidence. Moreover, neither NHFG nor USF&WS have suggested studies based on that faulty premise. NHFG and USF&WS are responsible for conserving, managing, and protecting fish and wildlife and their habitats, including general species population levels, as well as determining what levels of impacts constitute an unreasonable adverse effect.

Neither of those agencies has indicated that the Project should be subject to the stringent bird and bat conditions imposed by the Decision and Order. As discussed on page 3 of the “Proposed work Plan for Avian and Bat Studies at the proposed Groton Wind Project” (Application Appendix 17) the studies’ methodologies were designed to provide “avian and bat use of the Project Area throughout the year with an emphasis on migratory and breeding periods.” The specific study objectives noted in the USF&WS and NHFG-approved work plan do not reference a need to obtain population level data and, as noted in the agency recommendations in Appendix 18 of the Application, no agency requested or suggested that population level data be obtained by the Applicant.

The study designs mandated in the Order do not support studies of population level data. This is because the majority of the post-construction studies described in the Order will only evaluate migrating populations, not necessarily resident populations. Since migration in the northeast has been shown to be “broad front”⁶ and generally not focused in particular areas, post-construction monitoring will not necessarily be documenting the same individuals year to year. Furthermore, changes observed at the Project from year to year may be totally unrelated to the Project. For example, impacts that occur to a species at its wintering grounds will likely affect results observed during post-construction studies at the Project, although this change is not related to the Project operations. Changes in weather conditions may also affect the results year to year and have nothing to do with fluctuations in populations. In addition, ongoing commercial logging operations may remove or alter habitat year to year, which may affect populations.

⁶ “Broad front” or “broad swath” are terms used to characterize a large geographic area over which birds migrate. The area is discussed in greater detail on page 13 of Adam Gravel’ Supplemental Prefiled Testimony dated October 12, 2010.

Accordingly, because the bird and bat conditions were developed as the result of faulty assumptions that are not supported by scientific evidence, record evidence, or agency recommendations, they are unreasonable and arbitrary.

C. The conditions are overly burdensome on the Applicant in terms of cost and time. The cost of these conditions is estimated at between \$1 million and \$1.5 million. This cost further illustrates the unreasonableness of the post-construction bird and bat conditions. This is especially so given that no other energy project certificated by the SEC has ever been ordered to perform the host of post-construction surveys ordered in this case.

Interconnection Agreement Condition

18. The Applicant's May 13, 2011 Contested Motion for Clarification is incorporated herein by reference. As indicated in the Motion, it appears that the Subcommittee erroneously included in its Order a condition requiring the Applicant to file an interconnection agreement prior to commencement of construction. Because this condition appears to have been mistakenly conceived by the Subcommittee, good cause exists for clarifying, reconsidering and/or rehearing this aspect of the Order to remove the condition. In the event that the Subcommittee has not granted the Motion for Clarification at the time of the filing of the within Motion, the Applicant respectfully requests that the Subcommittee reconsider the Order and issue an order indicating that the Applicant is not required to file an interconnection agreement prior to commencement of construction.

Parties' Positions on Motion

19. In accordance with N.H. Code Admin. Rule Site 202.14(d), the undersigned contacted the parties to this proceeding in a good faith effort to obtain their concurrence with the relief sought herein. As of the time of the filing of this Motion, the following parties had responded with their positions: Counsel for the Public intends to object; and the Buttolph/Lewis/Spring Intervenor Group will object.

WHEREFORE, in view of the foregoing, Groton Wind respectfully requests that the Subcommittee:

- A. Reconsider its May 6th Decision and Order and issue an order replacing the post-construction bird and bat conditions contained therein with conditions that reflect the post-construction plans agreed to by Groton Wind and the New Hampshire Fish and Game Department;
- B. If it has not already done so by the time the instant motion is filed, issue an order clarifying that the Order does not require Groton Wind to file an interconnection agreement prior to commencement of construction; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

Groton Wind, LLC

By and through its Attorneys,

ORR & RENO, P.A.

One Eagle Square

P.O. Box 3550

Concord, NH 03302-3550

(603)224-2381

Dated: June 6, 2011

By:

Douglas L. Patch (ssg)
Douglas L. Patch
dlp@orr-reno.com

By:

A. S. Geiger
Susan S. Geiger
ssg@orr-reno.com

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2011, copies of the within Motion were sent to persons named on the Service List either by electronic mail or first class mail, postage prepaid.

A. S. Geiger
Susan S. Geiger

768322_1.DOC

Total Estimated Burden Hours: 265.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 23, 2011.

Colette Pollard,

Departmental Reports Management Officer,
Office of the Chief Information Officer.

[FR Doc. 2011-4565 Filed 3-1-11; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)

Cancellation of Oil and Gas Lease Sale 219 in the Cook Inlet Planning Area on the Outer Continental Shelf (OCS)

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: Cancellation of Cook Inlet Lease Sale 219.

SUMMARY: The Department of the Interior has decided to cancel Cook Inlet Sale 219 that is scheduled to occur in the Revised Program for 2007-2012. Cancellation of Sale 219 due to lack of interest is necessary to allow sufficient time to gather new baseline data for environmental review, analysis, and identification of mitigating measures. The time will also be used to further develop and implement measures to improve the safety of oil and gas development in Federal waters.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Orr, BOEMRE, Chief, Leasing Division, at (703) 787-1215 or renee.orr@boemre.gov.

Dated: January 25, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011-4615 Filed 3-1-11; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-FHC-2011-N037; 94300-1122-0000-ZZ]

RIN 1018-AX45

Fisheries and Habitat Conservation and Migratory Birds Programs; Draft Land-Based Wind Energy Guidelines; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a notice in the *Federal Register* on February 18, 2011, announcing the availability for public comment of draft Land-Based Wind Energy Guidelines (Guidelines). We are issuing a correction to that notice because we believe it gave the erroneous impression the draft Guidelines are ready for public use. However, our intention was for the notice to only announce the availability of draft Guidelines for public comment. We will publish the final Guidelines for public use after consideration of any comments received. We hereby amend the **SUMMARY** and **DATES** captions to clarify our intention.

DATES: This correction is effective March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Christy Johnson-Hughes, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358-1922. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

We published a notice in the *Federal Register* on February 18, 2011 (76 FR 9590), announcing the availability for public comment of draft Guidelines. The document contained some incorrect statements in the **SUMMARY** and **DATES** captions. We regret any confusion they may have caused.

The **SUMMARY** caption included this sentence: "These draft Guidelines are intended to supersede the Service's 2003 voluntary, interim guidelines for land-based wind development." In addition, the **DATES** caption indicated that the draft Guidelines would be effective February 18, 2011. However, the draft Guidelines we made available on February 18 are a draft version and

not final. They do not supersede the Service's 2003 Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines (Interim Guidance).

As stated in the notice, the comment period on the draft Guidelines will close May 19, 2011. We expect to issue final Guidelines for public use after consideration of any public comments received. The final Guidelines will become effective after publication of a notice of availability in the *Federal Register* and will supersede the Interim Guidance.

Correction

In the *Federal Register* of February 18, 2011, in FR Doc. 2011-3699, on page 9590, in the first and second columns, correct the **SUMMARY** and **DATES** captions to read as follows:

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability for public comment of draft Land-Based Wind Energy Guidelines (Guidelines). These draft Guidelines do not supersede the Service's 2003 Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines. We expect to issue final Guidelines for public use after consideration of any public comments received. The final Guidelines will become effective after publication of a notice of availability in the *Federal Register*. The final Guidelines will supersede the Service's 2003 Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines.

DATES: We must receive any comments or suggestions on the draft Guidelines by the end of the day on May 19, 2011.

Dated: February 24, 2011.

Jeffrey L. Underwood,

Deputy Assistant Director, Fisheries and Habitat Conservation.

[FR Doc. 2011-4611 Filed 3-1-11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L16400000.PH0000 LXSS006F0000 261A; 11-08807; MO# 4500020151; TAS: 14X1109]

Notice of Public Meetings: Northeastern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) the