

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2010-01
Application of Groton Wind, LLC for a Certificate of Site and Facility
for a Renewable Energy Facility in Groton, N.H.

November 4, 2013

PROCEDURAL ORDER AND NOTICE
OF POSSIBLE SUSPENSION OF CERTIFICATE OF SITE AND FACILITY

To Groton Wind LLC: You are hereby notified that the Site Evaluation Committee has received correspondence alleging that you are operating the Facility in the above referenced docket in violation of the terms and conditions of the Certificate of Site and Facility. The proceedings described herein may result in a determination that you are in violation of the terms and conditions of the Certificate of Site and Facility issued in this docket (and the Decision underlying such Certificate). If found to be in violation of the Certificate or Decision, the Certificate may be suspended and/or revoked pursuant to the provisions of RSA 162-H: 12, RSA 541-A: 30 and RSA 541-A:31.

Background

On May 6, 2011, a duly appointed Subcommittee of the Site Evaluation Committee (Subcommittee) issued its Decision granting a Certificate of Site and Facility (Certificate) with conditions (Decision) to Groton Wind, LLC (Applicant), authorizing the construction and operation of a renewable energy facility (Facility or Project) consisting of 24 Gamesa G82 turbines, each having a nameplate capacity of 2 megawatts (MW), for a total nameplate capacity of 48 MW to be located in the Town of Groton, Grafton County, New Hampshire (Site). On October 14, 2011, the New Hampshire Supreme Court issued an order declining to review the Decision on appeal.

The Applicant subsequently constructed the Facility. The Facility has commenced commercial operations.

On December 31, 2012, the Committee received a letter from the Selectmen of the Town of Rumney expressing concerns about the safety and maintenance of the turbine roads within the Site. On January 11, 2013, the Applicant delivered a letter to the Committee responding to the concerns raised by the Town. On January 16, 2013, the Rumney Selectmen replied to the Applicant's response and indicated that the issue of the maintenance of the turbine roads within the Site during the winter months remained unresolved. Subsequent meetings amongst safety officials have resulted in the drafting of an Environmental, Health and Safety Plan (Plan). The

Plan was filed with the Committee on October 11, 2013. Counsel for the Public responded to the Plan with concerns on October 18, 2013.

On January 14, 2013, James Buttolph on behalf of certain intervenors in this docket filed a letter with the Committee asking the Committee to re-open the record. In support of his request Mr. Buttolph alleges that the construction of the project did not comport with the plans as approved by the Committee and that there were significant revisions to the plans specifically regarding the location of the operation and maintenance (O&M) building and the location of two wind turbines. Mr. Buttolph also asserts that the revisions to the planned facility were outside of the purview of the wetlands permit conditions and the alteration of terrain permit conditions.

On January 16, 2013, the Applicant responded to Mr. Buttolph's letter. In response, the Applicant asserts that the revisions to the plans and the facility as constructed were properly submitted to the Department of Environmental Services as modifications or amendments to the wetlands permit and the alteration of terrain permit. The Applicant asserts that further review by the Committee was unnecessary under the terms of the Certificate.

On February 13, 2013, Counsel for the Public responded to Mr. Buttolph's request. Counsel for the Public requests the Committee to issue an order requiring the Applicant to move the O&M building to its originally proposed location or alternatively to suspend the Certificate.

On August 14, 2013, the Committee received a letter from Investigator Ron Anstey of the State Fire Marshal Office. In his letter, Investigator Anstey alleges that statements made in testimony by the Applicant's representatives at the time of the adjudicatory hearing were not true. In addition, Investigator Anstey's letter alleges that the Applicant has failed to comply with applicable fire and building codes and, therefore, has failed to comply with the Decision granting a Certificate of Site and Facility with conditions in the above docketed matter. Investigator Anstey has recommended that all operations on the site cease until all safety concerns, plans, reviews, and required inspections have been completed and approved. Inspector Anstey's request if granted would result in a suspension of the Certificate.

On October 18, 2013, the Fire Marshal filed a letter setting forth the sections of the State Building Code (International Building Code, 2009 Edition), the New Hampshire State Fire Code (NFPA 1, 2009 Edition; NFPA 101, 2009 Edition; NFPA 10, NFPA 12, NFPA 72) and the Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations, NFPA 85, that he claims form the basis for his authority and for the appropriate operation of the Facility in accordance with the Certificate. The Fire Marshal's letter also sets forth additional relevant codes and provisions.

Procedural Schedule

A pre-hearing conference was held on October 2, 2013. At the pre-hearing conference the parties agreed in principle to the terms of a pre-hearing process. This Procedural Order sets forth the pre-hearing process that will be utilized in this matter:

On or before **November 18, 2013**, any party who objects to the Committee's reliance on the codes set forth by the Fire Marshal in the October 18, 2013 filing, or who believes other or additional codes apply shall file a response with the secretary to the Committee.

On or before **November 18, 2013**, any party who objects to the Environmental, Health and Safety Plan shall file its response with the secretary to the Committee.

On or before **December 4, 2013** the parties shall file Opening Briefs addressing the following issues which were raised at the pre-hearing conference on October 2, 2013:

- 1.) Did the Department of Environmental Services have the authority to modify the Certificate regarding the placement of the O&M building and the turbines?
- 2.) Does the Office of the State Fire Marshal have the authority to regulate the project and does he have the authority to request suspension of the certificate in the manner contained in Inspector Anstey's letter dated August 12, 2013?

In addressing these issues the parties should also address all subsidiary issues and provide the Committee with a complete description of any relief sought and the reasons therefor.

On or before **January 5, 2014**, the parties may file briefs that respond to the Opening Briefs.

A further pre-hearing conference shall be scheduled for the **week of January 27, 2014**.

The procedural schedule contained herein is a direct result of the agreement between the parties that the schedule set forth herein is necessary to address preliminary issues. The parties should be advised that upon resolution of the preliminary issues an adjudicative hearing may still be necessary. The Committee will avoid unnecessary delay in the scheduling of a necessary adjudicative hearing and urges the parties to consult with each other and conduct discovery to the extent possible on an informal basis so that an adjudicative hearing may be scheduled without delay.

A copy of this Procedural Order and Notice of Possible Suspension of Certificate of Site and Facility shall be provided to the Applicant and to all parties in accordance with New Hampshire Code of Administrative Rules, Site 202.07.

So ordered this 4th day of November, 2013 by the Site Evaluation Committee.

A handwritten signature in black ink, appearing to read "Thomas S. Burack". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas S. Burack
Chairman and Presiding Officer
NH Site Evaluation Committee