

# Orr&Reno

December 4, 2013

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Andrew D. Grosvenor

**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

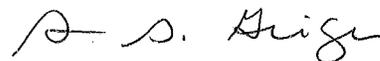
**Re: Docket 2010-01, Groton Wind, LLC**

Dear Ms. Murray:

Enclosed for filing with the Site Evaluation Committee in the above-captioned docket, please find an original and 15 copies of Groton Wind, LLC's Opening Brief and Motion to Amend Certificate of Site and Facility.

Please contact me if there are any questions about these filings. Thank you for your assistance.

Very truly yours,



Susan S. Geiger

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Lawrence A. Kelly  
(Of Counsel)

Neil F. Castaldo  
(Of Counsel)

cc: Service List (electronic mail only)

Enclosures

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

**DOCKET NO. 2010-01**

**Application of Groton Wind, LLC  
for a Certificate of Site and Facility**

**OPENING BRIEF OF GROTON WIND, LLC**

NOW COMES Groton Wind, LLC (“Groton Wind”), by and through its undersigned counsel, and respectfully submits this opening brief in accordance with the November 4, 2013 Procedural Order and Notice (“Procedural Order”) issued by the Chairman and Presiding Officer of the New Hampshire Site Evaluation Committee (“SEC” or “Committee”). The Procedural Order directs parties to file openings briefs on or before December 4, 2013 on the following issues raised at the October 2, 2013 prehearing conference: “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?” Procedural Order at 3.

**I. Question One:**

**A. Introduction**

Groton Wind firmly believes that the Department of Environmental Services had the authority to approve the revised placement of the O&M building and turbines. The

Report of Prehearing Conference dated November 4, 2013 (“Prehearing Conference Report”) frames the first question in terms of “the authority of the Department of Environmental Services to approve the modification of the plan resulting in the new location of the O&M building and the alleged change in turbine locations.” Prehearing Conference Report at 4. Groton Wind believes that the issue, as framed during the October 2, 2013 prehearing conference more accurately captures the role of the Department of Environmental Services (“DES”) in this matter. As the Transcript of the Prehearing Conference indicates, the appropriate first question presented here is whether DES was properly delegated the authority or had the authority to approve a modification in the location of the O&M building and wind turbines. Tr. Prehearing Conference (Oct. 2, 2013) at 74-75, and 76. For reasons set forth below, Groton Wind respectfully submits that DES was properly delegated and had the authority to approve modifications of the locations of the O&M building and wind turbines. Groton Wind further submits that inasmuch as the wording of the first question in the Procedural Order is premised on the notion that DES modified Groton Wind’s Certificate of Site and Facility (“Certificate”), Groton Wind respectfully disagrees that such a modification occurred. For the reasons discussed below, the Subcommittee properly delegated to DES the authority to monitor the project and approve revised site plans.

**B. The Subcommittee Properly Authorized DES to Approve Revised Site Plans**

On May 6, 2011, the SEC Subcommittee that considered Groton Wind’s Application for a Certificate of Site and Facility issued an Order and Certificate of Site and Facility (“Order”) in this docket. The Subcommittee deemed said Order “to be a

Certificate of Site and Facility” and included as part of the Order, the Subcommittee’s Decision dated May 6, 2011 “and any conditions contained therein.” Order (May 6, 2011) at 2. The above-referenced Decision “incorporated into the Certificate” the Wetlands Permit and Alteration of Terrain (“AoT”) Permit issued by DES. Decision Granting Certificate of Site and Facility With Conditions (“Decision”) (May 6, 2011) at 19, 20. The Wetlands and AoT Permits were included in the Order as Appendix I. See Order at 3. 19. Thus, as demonstrated by the provisions of the Order and Decision noted above, it is clear that the Wetlands and AoT Permits, including the permits’ conditions, are part of Groton Wind’s Certificate.

Among the many “Project Specific Conditions” listed in both the Wetlands and AoT Permits is the requirement that DES review and approve any revisions or changes in the Project’s site plans. More specifically, the Wetlands Permit states that all work shall be in accordance with revised plans by Vanasse Hangen Brustlin, Inc. dated July 9, 2010 (Wetlands Permit Project Specific Condition #1) and that “[p]rior to construction, **any plan revisions or changes in construction details or sequences shall be submitted to DES for review and approval.**” (Wetlands Permit Project Specific Condition #2) (emphasis added). Similarly, the AoT Permit states that “[t]he revised plans dated July 9, 2010 and supporting documentation...are part of this approval” (AoT Permit Project Specific Condition #4) and that “[r]evised plans shall be submitted for an amendment approval prior to any changes in construction details or sequences.” (AoT Permit Project Specific Condition #1) (emphasis added).

On November 10, 2011, Groton Wind provided DES with revised Project plans dated October 28, 2011. The Project’s consultants, Vanasse Hangen Brustlin, Inc.

("VHB"), submitted to DES site plans and other supporting documents describing eight minor changes to the Project's July 9, 2010 plans. Letter from VHB (Peter J. Walker) to Rene Pelletier, Assistant Director, NHDES Water Division (Nov. 10, 2011) at 1.<sup>1</sup> DES reviewed the revised plans and determined that the "minor modifications are acceptable as presented." Electronic mail from Craig Rennie, NHDES Water Division, to Peter Walker (Dec. 5, 2011).<sup>2</sup> On December 5, 2011, DES issued amended approvals for the Project's Wetlands and Alteration of Terrain Permits, and confirmed that the Project could "proceed with the minor modifications as depicted on the revised plans by VHB dated October 28, 2011." *Id.*

As explained above, the plain language of the Wetlands and AoT Permits indicates that DES must review and approve any revisions to the July 9, 2010 site plans. Because the Permit conditions are part of Groton Wind's Certificate, the Certificate - by its very terms -authorizes DES to review and approve revisions to the Project's site plans. DES acted consistently with the terms of Groton's Certificate, and therefore did not modify it.

Although DES amended its approvals of the Wetlands and AoT Permits, such amendment was expressly authorized by the Subcommittee. The Decision states that the Subcommittee "delegates its authority to approve amendments to the Alteration of Terrain Permit to the New Hampshire Department of Environmental Services, Water Division" Decision at 20 and "delegates its authority to approve amendments to the Wetlands Permit." Decision at 19. The Decision further states that DES "is hereby delegated the

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<sup>1</sup> This letter is submitted as Attachment 1 to Groton Wind's Motion to Amend Certificate filed contemporaneously herewith.

<sup>2</sup> This electronic mail message is submitted as Attachment 2 to Groton Wind's Motion to Amend Certificate filed contemporaneously herewith.

authority to monitor the project and its compliance with conditions of the Certificate and with all laws and regulations pertaining to the permits that it has issued.” Decision at 61. In addition, the Order granted DES “the authority to approve modifications or amendments to [its] permits and certificates.” Order at 3.

The Subcommittee<sup>3</sup> invoked RSA 162-H: 4, III in delegating its authority to monitor the project and to amend the Wetlands and AoT Permits. *See* Decision at 19, 20.

RSA 162-H:4, III provides as follows:

The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate under this chapter to such state agency or official represented on the committee as it deems appropriate, but, subject to RSA 162-H:10, it may not delegate authority to hold hearings, issue certificates, determine the terms and conditions of a certificate, or enforce a certificate.

Because the Department of Environmental Services was represented on the Subcommittee, and because the delegation to DES did not include holding hearings, issuing the certificate, determining the terms or conditions of the certificate, or enforcing the certificate, the Subcommittee acted consistently with its authority under RSA 162-H:4, III. Even assuming, *arguendo*, that the Subcommittee exceeded its authority under RSA 162-H:4, III, additional authority exists to permit the Subcommittee to delegate to DES the authority to review and approve site plan revisions. The Subcommittee is authorized to include in the Certificate “such reasonable terms and conditions as the committee deems necessary and may provide for such reasonable monitoring procedures as may be necessary.” RSA 162-H:16, VI. The DES Permit conditions (which were incorporated into the Certificate) authorizing DES to review and approve site plan changes are reasonable. Similarly, the provisions of the Decision and Order delegating to

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<sup>3</sup> Under RSA 162-H:4, V, the Subcommittee’s powers and duties are coextensive with the Committee’s.

DES the authority to monitor the project and approve amendments to its permits, are also reasonable.

It was entirely reasonable for the Subcommittee to delegate to subject matter experts such as DES the authority to review and approve minor site plan changes. It is unreasonable for Subcommittee members to devote their time and resources to technical reviews and fieldwork typically conducted by DES, or to review plan modifications necessitated by field conditions that may not have been readily apparent when original site plans were presented to the Subcommittee. As the SEC has previously recognized:

The construction of energy facilities is a process which requires detailed advanced planning and preparation. However, at times, even the most advance planning procedures cannot forecast conditions which may be encountered during the actual construction process. When such circumstances arise, it is appropriate for the Certificate owner to seek relief from this Committee **or a designated state agency or official if provided for in the Certificate.**

Application of AES Londonderry, L.L.C., SEC Docket No. 98-02, Order (April 4, 2001) at 2.

The Certificate specifically designated DES as the appropriate state agency to monitor the Groton Wind project and to review and approve site plan revisions. Neither the Order nor the Decision stated that modifications or amendment to the DES permits were subject to additional review and approval by the Subcommittee or the full SEC. Had the Subcommittee intended to reserve to itself the authority to review and approve changes to the site plans that were referenced in the DES permits, the Subcommittee certainly could have said so, but did not. For example, the Order directs the Applicant to bring other specific matters before the Subcommittee in the future (*e.g.*, filing the final interconnection agreement [*see* Order at 3]; immediately reporting new information or evidence of an historic site or other archaeological resources [*see* Order at 4]; and filing

the acoustics engineer's report within 30 days; [see Order at 5]). However, the Order provides no similar directive for site plan revisions. And for good reason. Requiring the SEC to approve every modification to an energy facility's site plans would unduly delay project construction. This is inconsistent with RSA 162-H:1 which states that undue delay in the construction of needed facilities such as the Groton Project<sup>4</sup> should be avoided.

As indicated in the letter from the project's environmental and engineering consultants, VHB, the change in the O&M building had several environmental benefits. As noted in the letter and supporting materials, the O&M building was constructed in the same general facility as described in the application, and is now located in the area that had been proposed for development as a switchyard<sup>5</sup> for this project. The proposed switchyard was to be enclosed within a fenced area or pole-mounted, and included "switching equipment, protective relay and control equipment, transfer trip equipment, disturbance analyzer equipment, transducers, Remote Terminal Unit, and telemetry equipment, and meters." Application at 30. Relocating the O&M building to the location originally proposed for the switchyard eliminated the need to cross Clark Brook, reduced the required land disturbance by approximately .7 acres, and reduced the proposed clearing with a 50 ft buffer to two perennial streams by approximately 8,150 sq. feet. The two wind turbines (E2 and E3) were relocated "very slightly" as the result of roadway modifications that reduced the Project's roadways and footprint in East Ridge area. Certainly, had DES felt that relocating the O&M building or the two wind turbines

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<sup>4</sup> The need for the Groton Wind facility is discussed in the Decision at p. 30.

<sup>5</sup> Subsequent to the filing of the application, the plans for this switchyard changed. The Applicant identified a new proposal for interconnecting with the grid which involved construction of voltage step-up facilities in Holderness. See Decision at 8, 25 and 51-52, This information was presented to and considered by the SEC. *Id.*

was a bad idea, or a violation of any certificate or permit condition, it would not have approved the changes. Instead, DES deemed the revisions “minor” and provided “confirmation to proceed with the minor modifications as depicted on the revised plans by VHB dated October 28, 2011.” Electronic mail from Craig Rennie to Peter Walker (Dec. 5, 2011).

In this case the SEC properly delegated project monitoring and plan modification review and approval to DES under RSA 162-H:4, III, and Groton Wind complied with the process specified in the Decision, Order and permit conditions and obtained approval for its plan modifications, which DES has determined to be “minor.” The Certificate conditions at issue here are reasonable, and therefore are authorized by RSA 162-H:16, VI. Lastly, because these conditions were neither challenged nor appealed in accordance with RSA 541, they are final. *See* RSAs 162-H:16, VI; :16, 11.

### **C. Conclusion Regarding Question One**

Groton Wind and DES have acted consistently with the terms of the Certificate and the ancillary documents incorporated into it. DES has not modified the terms of the Certificate and Groton Wind has not violated them. No further action need be taken by the Committee in this matter. In the alternative, if the Committee believes that it is necessary for it to undertake a proceeding to review and approve the revised site plans that DES has already reviewed and approved, Groton Wind has submitted herewith a Motion to Amend Certificate for the Committee’s consideration.

## II. Question Two:

### A. Introduction

Investigator Anstey's letter of August 12, 2013 to SEC counsel, Attorney Michael Iacopino, alleges that Groton Wind has not complied with the SEC's Decision granting a Certificate of Site and Facility With Conditions to Groton Wind, LLC. The letter also alleges that Groton Wind has violated the state building and fire codes by not submitting building, site and fire protection plans for the Groton Wind facility to the State Fire Marshal prior to or during construction, and by not installing an automatic fire suppression system in wind turbine nacelles. Investigator Anstey's letter also indicates that the State Fire Marshal's Office "is strongly considering a stop work order on the site" and "would recommend that the Site Evaluation Committee mandate that all operation on the site cease until all safety concerns, plans, reviews, and required inspections have been completed and approved." For the reasons discussed below, Groton Wind disagrees with Investigator Anstey's allegations and recommendations.

### **B. The Office of the State Fire Marshal does not have the independent authority to regulate the Groton Wind Project and does not have enforcement authority to request suspension of the certificate in the manner contained in Investigator Anstey's letter dated August 12, 2013.**

#### **1. The SEC, not the State Fire Marshal, has authority to regulate the Groton Wind Project.**

Groton Wind submitted comprehensive project plans to the SEC on March 26, 2010 as part of its application for a Certificate of Site and Facility pursuant to RSA 162-H. As required by RSA 162-H:6-a, I, the SEC (through its attorney) issued a letter on April 5, 2010 to the "state agencies having jurisdiction, under state or federal law, to regulate the construction or operation of the proposed facility". The letter provided

notice of the Groton Wind Project application and solicited comments on the completeness of the application. This letter was addressed to Department of Safety Commissioner John J. Barthelmes, in addition to other state officials, and informed the addressees that if they did not have a copy of the Groton Wind application, they were to contact Attorney Iacopino immediately. Thus, all agencies within the Department of Safety (including the State Fire Marshal's Office) were served with written notice of the Groton Wind application.

In view of the foregoing, Investigator Anstey's assertion that Groton Wind erred by not filing project plans with the State Fire Marshal's office prior to construction is incorrect. Groton Wind met its obligations to the State Fire Marshal's Office by filing its application with the SEC. No separate filing with the State Fire Marshal's Office is required. *See* RSA 162-H:7, VII (“[n]otwithstanding any other provision of law, the application shall be in lieu of separate applications that may be required by any other state agencies.”). The review process under RSA 162-H “envisions that all interests be considered and all regulatory agencies combine for the twin purposes of avoiding undue delay and resolving all issues ‘in an integrated fashion.’” *Public Service Company of New Hampshire*, 120 N.H. 68, 71 (1980). The SEC's integrated review process under RSA 162-H means that an energy facility developer need not make separate filings with every state agency having jurisdiction to regulate the construction and operation of the facility.

Notwithstanding that it was not required to make a separate filing of its application with the State Fire Marshal's office, Groton Wind has provided that office with a site plan and plans for its Operations and Maintenance (“O&M”) building, as

acknowledged in Investigator Anstey's letter. In addition, to the best of Groton Wind's knowledge, the State Fire Marshal's Office has been provided with all of the other plans that it has requested, and Groton Wind has attempted to confirm this with the State Fire Marshal's Office.

The State Fire Marshal's Office did not actively participate in the SEC process. However, by letter dated October 17, 2010, the Fire Marshal requested that the SEC include several conditions in Groton Wind's certificate should one be issued. Those proposed conditions were as follows:

1. All structures, including but not limited to towers, nacelle, operation and maintenance buildings be constructed in accordance with the following codes and standards:  
International Building Code, 2009 edition,  
NFPA 1, Fire Code, 2009 edition,  
NFPA 101, Life Safety Code, 2009 edition  
NFPA 850 Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations, 2010 edition.
2. To insure compliance with the above codes and standards, the State Fire Marshal or his designee will review all plans relative to the project and perform routine compliance inspections during construction and a final acceptance inspection. All plans shall be stamped by a New Hampshire licensed engineer with expertise in the appropriate discipline.
3. If technical assistance is required the State Fire Marshal may require an independent third party review in accordance with NFPA 1, 1.15.
4. In addition to any code required fire protection systems, monitored fire suppression systems shall be installed in each nacelle and generator housing.

*Letter from J. William Degnan, Director/State Fire Marshal to Jane Murray (Oct. 17, 2010).* The SEC gave "due consideration to the request of the

Fire Marshal” but did not adopt the above-listed certificate conditions. Decision at 74. Instead, the SEC conditioned Groton Wind’s certificate upon the Applicant’s compliance “with all applicable federal and state fire, safety, and building codes.” *Id.* Thus, to the extent that the State Fire Marshal sought, as part of the SEC process, authority to “review all plans relative to the project and perform routine compliance inspections during construction and a final acceptance inspection,” that request was denied by the SEC. In addition, the SEC denied the State Fire Marshal’s request that monitored fire suppression systems be installed in each nacelle and generator housing. Accordingly, the claims in Investigator Anstey’s letter that Iberdrola/Groton Wind has not complied with the SEC’s Decision dated May 6, 2011 are unfounded.

The State Fire Marshals’ Office was not delegated authority to monitor the construction and operation of the Groton facility. In these circumstances, the State Fire Marshal’s Office lacks any authority to enforce the terms and conditions of the Certificate.

**2. The Authority to Enforce State Building and Fire Codes Rests With the Town of Groton.**

Investigator Anstey’s letter invokes the State Fire Marshal’s authority to enforce the state building code because the Town of Groton does not have a building inspector, and asserts that “the State Fire Marshal is charged with insuring that the State Fire Code is enforced throughout the state.” In addition, the letter refers to the State Fire Marshal’s Office as “the authority having jurisdiction.” Groton Wind respectfully disagrees these assertions.

Although the Groton Wind Project was certificated by the SEC pursuant to RSA 162-H, each state agency “having jurisdiction” retains its powers and enforcement duties. RSA 162-H:12, IV. The authority to enforce the state building and fire codes is addressed in RSA 155-A:7, I. which provides as follows:

**155-A:7 Enforcement Authority. –**

I. The local enforcement agency appointed pursuant to RSA 674:51 or RSA 47:22 shall have the authority to enforce the provisions of the state building code and the local fire chief shall have the authority to enforce the provisions of the state fire code, provided that where there is no local enforcement agency or contract with a qualified third party pursuant to RSA 155-A:2, VI, the state fire marshal or the state fire marshal's designee may enforce the provisions of the state building code and the state fire code, subject to the review provisions in RSA 155-A:10, **upon written request of the municipality.** (Emphasis added).

As the foregoing statute indicates, when a municipality such as Groton lacks a building code enforcement officer, the State Fire Marshal may enforce the provisions of the state building code upon written request of the municipality. Upon information and belief, the Town of Groton has not made a written request of the State Fire Marshal as required by RSA 155-A:7, I. In fact, the municipal governing body, the Groton Select Board, publicly stated at its October 1, 2013 meeting, that it is Select Board’s “understanding that the Town Fire Chief enforces the building and fire code.” *See* Attachment A submitted herewith. Moreover, as the attached letter from the Groton Fire Chief indicates, the Groton Fire Chief visited the O&M building several times during construction and was given a tour of the building in March, 2013. *See* Attachment B submitted herewith. The Fire Chief found the building to be “very acceptable” and noted that egress locations were adequate and a supervised alarm system was in place. *Id.*

In view of the foregoing, the State Fire Marshal lacks authority to enforce the state building code with respect to the Groton Wind project. This position is further supported by RSA 155-A:2, IX which states that nothing in that chapter “shall be construed to permit or encourage the state to initiate or assume an independent role in the administration and enforcement of the state building code for a building or structure that is not owned by the state unless otherwise authorized by law.” Thus, absent a written enforcement directive from the Town of Groton, the State Fire Marshal Office’s cannot assume state building code enforcement authority in this case.

Because the Town of Groton has a fire chief, RSA 155-A:7, I makes clear that the responsibility for enforcing the state fire code rests with the Groton fire chief – not the State Fire Marshal. In view of the foregoing, the State Fire Marshal does not have the enforcement authority as alleged in Investigator Anstey’s letter. And even though it is arguable that the State Fire Marshal has the authority to enforce the state fire code under RSA 153:8-a, I(b), such authority must be exercised by giving consideration to the written recommendations of the local fire chief, *see* RSA 153:8-a, II and must be coordinated with local fire department officials. RSA 153:4-a, II. The Groton Fire Chief has not indicated that a monitored fire suppression system in each tower is necessary. Moreover, the SEC’s Decision notes that “monitored fire suppression systems, although available, are not standard in the industry, provide little protection and increase the risks to employees associated with accidental discharges of the suppression system.” Decision at 74. As noted above, the SEC did not adopt the State Fire Marshal’s request to impose a Certificate condition requiring the installation of a fire suppression

system. In view of the foregoing, Investigator Anstey's allegations that Groton Wind has violated its SEC Certificate is without merit.

Groton Wind recognizes that the Decision requires that Groton Wind "comply with all applicable federal and state fire, safety, and building codes." *Id.* While Investigator Anstey's letters of August 12, 2013 and October 18, 2013 (to Attorney Iacopino) cite various provisions of the International Building Code and National Fire Prevention Act, neither letter explains whether those provisions are "applicable" to a wind farm. Nor do they allege specific facts on the part of Groton Wind that would constitute violations of the particular code provisions cited in the letters. This leaves Groton Wind with the task of formulating Investigator Anstey's arguments for him and then responding to them - a situation that is totally at odds with Groton Wind's due process rights and with principles of fundamental fairness. Nevertheless, and without waiving its right to more specific notice of the State Fire Marshal's factual and legal allegations, Groton Wind responds to the August 12<sup>th</sup> letter as follows:

The citation to NFPA 1, 2009 edition, section 18.2.3.1.4 is inapplicable to the instant situation. This code provision authorizes the agency having jurisdiction ("AHJ") to require additional protection features where fire department access roads cannot be installed. Because Groton Wind's roads have been installed and because the Groton Fire Chief is the AHJ, the State Fire Marshal has no authority under the cited provision with respect to Groton Wind. Moreover, to the extent that Investigator Anstey is relying on this code provision in support of his argument that Groton Wind must install a monitored fire suppression system in each turbine nacelle, that argument must fail because the SEC has already considered and rejected the Fire Marshal's request for such a system.

NFPA 850, 2010 edition is cited for the proposition that a fire protection design is required, and section 10.5.3.5.1 is invoked as addressing “fire protection in the nacelles.” The letter then states that the State Fire Marshal, as the authority having jurisdiction, “should have been involved in the fire protection design discussion at a very early stage.” The State Fire Marshal’s involvement with the Groton Project occurred within the context of the SEC process and consisted of a letter containing the recommendations listed above. The SEC did not accept the recommendation requiring the State Fire Marshal to review all plans relative to the project, or the recommendation for a monitored fire suppression system in each nacelle and generator housing. Thus, the Fire Marshal’s reliance on the aforementioned code provisions is misplaced. However, even if those code provisions are “applicable” Groton Wind has satisfied them. Groton Wind has provided to Investigator Anstey a copy of its “Fire Safety System and Approach” and a copy of a document from its turbine manufacturer, Gamesa, regarding its integrated fire detection and protection systems. To date, Investigator Anstey has not provided Groton Wind with a response to these documents other than as part of a requirement that a fire suppression system be installed in the turbine nacelles.

The August 12<sup>th</sup> letter asserts that the state building code requires that certificates of occupancy be issued for the structures at the Groton Wind project and that such certificates have not been issued. However, as the attached letter from the Groton Fire Chief states, there are no occupancy requirements for the Town of Groton. Moreover, even if there were a certificate of occupancy requirement in the Town of Groton, the SEC’s certificate of site and facility supersedes the enforcement of any such local

requirement. See *Public Service Company of New Hampshire v. Town of Hampton*, 120 N.H. 68 (1980).

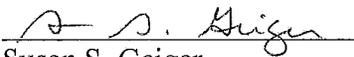
**C. Conclusion Regarding Question Two**

For the reasons explained above, the State Fire Marshal's Office does not have the authority to regulate the Groton Wind Project and therefore cannot issue an effective "stop work order" as indicated in Investigator Anstey's letter, nor can it compel the SEC "to mandate that all operation on the site cease until all safety concerns, plans reviews, and required inspections have been completed and approved." While Iberdrola and Groton Wind, LLC strongly disagree with many of the allegations and conclusions in Investigator Anstey's August 12, 2013 letter, they remain willing to work with the State Fire Marshal's Office and local enforcement authorities to ensure that the Groton Wind facility continues to operate safely.

Respectfully submitted,

Groton Wind, LLC

By Its Attorneys

  
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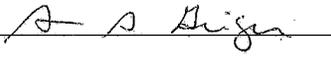
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Dated: December 4, 2013

Certificate of Service

I hereby certify that, on this 4th day of December 2013, a copy of the foregoing Brief was sent by electronic mail or U.S. mail, postage prepaid, to the persons named on the service list for this docket.

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Susan S. Geiger

**TOWN OF GROTON  
SELECT BOARD MEETING  
October 1, 2013**

**In Attendance: Christina Goodwin, Kyle Andrews, Miles Sinclair, Pamela Hamel (Administrative Assistant)**

**Audience Members Present**

Christina called the meeting to order at 7:02 pm.

**MINUTE APPROVAL**

**Christina motioned to approve the minutes of September 24 as written, Kyle 2<sup>nd</sup>, so voted.**

**UPDATES**

Miles reported that he has spoken with Bruce Barnard regarding a concern with the Town House septic system. Bruce agreed to look at the system.

**OLD BUSINESS**

Fitzpatrick Building Permit Violation

The Board learned that enforcement of building permit violations are addressed through the courts. They will forward the packet of information regarding the violations to the Town's attorney to ascertain if she feels this is a case worth pursuing based upon the evidence.

Construction and Demolition/Debris (C & D)

The Board discussed a few remaining items regarding the new C & D policy. Property owners will be expected to have exact change or use a check. Receipts will be given. The current receipt books and money pouches are sufficient. The Board also included an additional vehicle category. **Miles motioned to approve the C & D policy as amended, Christina 2<sup>nd</sup>, so voted.** A C & D container will be available the week of October 7.

Transfer Station Hours

The Board reviewed the spreadsheet of the number of property owners who use the transfer station on Wednesday and Sunday after 5:00 pm. They do not feel that the current hours should be changed due to the number of people who use the facility during that time frame.

Building Permit for Gibson, Map 5 Lot 116

According to a Department of Environmental Services' (DES) new rule, Mr. Gibson must have a DES approved septic system in order to make the proposed changes to his structure. Chuck Stata stated that because the Department's records are less than what they should be the Town has had an agreement with them that if a system is not failing then recording where the system is and any history about it satisfies DES. This was for an existing system that was operating. Mr. Gibson has a functioning system but is unable to locate his approval number. He is not changing use but he is demolishing the current structure and building a new one in the same footprint. Because of the new rule the Board does not feel they can sign the permit. They will contact the property owner and ask him to contact DES regarding his situation.

## **NEW BUSINESS**

### Letters to Hebron and Rumney regarding 2014 Perambulation

**Christina motioned to sign the letters to Hebron and Rumney regarding the 2014 perambulation, Miles 2<sup>nd</sup>, so voted.**

### Letter to Senator Forrester regarding the EBT Cards Performance Audit

**Christina motioned to sign the letter to Senator Forrester, Kyle 2<sup>nd</sup>, so voted.** According to the audit 78% of the EBT funds for assistance to low income families/individual were used as a cash benefit and there is no way to track how the funds are being spent.

### Building Permit for Watson, Map 6 Lot 22-1

**Kyle motioned to sign the building permit for Watson, Miles 2<sup>nd</sup>, so voted.**

### Letter of Resignation

With regret the Board accepted Rachelle Hamel's resignation as a Supervisor of the Checklist. As this is an elected position only Town residents are qualified to serve in this capacity and Rachelle no longer resides in Town. The remaining supervisors will appoint her replacement until the next election.

### Intent to Cut for Iroquois Master Fund Ltd., Map 8 Lot 2

**Miles motioned to sign the Intent to Cut for Iroquois Master Fund Ltd. Map 8 Lot 2, Kyle 2<sup>nd</sup>, so voted.**

### Mark Watson

Mr. Watson asked the Board if they were aware of the letter the State Fire Marshall sent to the Site Evaluation Committee (SEC) alleging that Iberdrola had not submitted any fire suppression plans for the Fire Marshal's office to review and the permitting process has not been followed through on. He asked what the Board's position is in reference to the Town's safety.

It is the Board's understanding that the Town Fire Chief enforces the building and fire code. They had a recent conversation with Chief Thompson who stated that he did have a discussion with a representative of the Fire Marshal's office (the Board could not recall the name of the individual) regarding the plans they had received. They were asking the Chief if he was okay with their office taking a look at the project. He did not have a problem with this. In addition, the Board finds it hard to believe that this project went through the entire SEC process and no one from the State, who would have a concern about fire issues, could claim they did not know this was going on and thus could not participate. However, they did have knowledge as the Chief had contact with the Fire Marshal's office and they had a copy of the plans. This is before the SEC now.

## **OTHER BUSINESS**

The backhoe is broken down. Bubba Ellis reported that it is an electrical issue. A minor part is needed. JCB came out right away. They have ordered the part and it may be here by tomorrow. If not they would take the part off another machine they have. The Board is concerned about the potential delay to the bridge work. They will revisit the progress on the bridge project next Tuesday.

The SEC meeting scheduled for tomorrow is a pre-hearing conference. No one from the Board will attend.

Miles will be attending the October 15 court hearing, NH Wind Watch versus the Town of Groton Planning Board, regarding the EDP Renewables met tower approval.

**Kyle motioned to adjourn at 8:00 pm, Christina 2<sup>nd</sup>, so voted.**

Respectfully Submitted,  
Pamela Hamel

March 17, 2013

Mr. Ryan Haley  
Manager, Croton Wind  
Re: Occupancy of OEM Building

There are no occupancy requirements for the Town of Croton, NH. I did visit the building numerous times during construction and was given a tour of the building approximately 10 days ago and found it to be very acceptable, maintained and easy to locate anything in the building. Egress locations were adequate and a supervised alarm system in place.

If there are any further concerns or questions please feel free to contact me at your earliest convenience.

Respectfully,

Roger L Thompson  
Fire Chief