

Orr&Reno

March 14, 2014

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Via U.S. 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 3 copies of two motions submitted on behalf of Groton Wind, LLC. The first is a Contested Motion to Modify Procedural Order and the other is a Contested Motion for Rehearing/ Reconsideration of Procedural Order Regarding Filing Settlement Correspondence Between The Office of State Fire Marshal and Groton Wind, LLC.

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

Lawrence A. Kelly
(Of Counsel)

Neil F. Castaldo
(Of Counsel)

Very truly yours,


Susan S. Geiger

cc: Service List (electronic mail only)
Enclosures
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THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

DOCKET NO. 2010-01

RE: GROTON WIND, LLC

CONTESTED MOTION TO MODIFY PROCEDURAL ORDER

NOW COMES Groton Wind, LLC (“Groton Wind”) and respectfully moves the New Hampshire Site Evaluation Committee (“Committee” or “SEC”) or its Presiding Officer to modify the Procedural Order dated February 20, 2014 which establishes March 14, 2014 as the deadline for the filing of Groton Wind’s statement and copies of the building, life safety and fire codes that Groton Wind believes are applicable to the Groton Wind Project. In support of this Motion, Groton Wind states as follows:

1. By order dated February 20, 2014 (“Procedural Order”), the Presiding Officer established a procedural schedule for issues raised by the State Fire Marshal in correspondence dated August 14, 2013. *Procedural Order* (Feb. 20, 2014) at 3. Among other things, said procedural schedule required the Fire Marshal to submit prefiled testimony by March 3, 2014. *Id.*

2. The Procedural Order also directed Groton Wind to “file a statement identifying the building codes, life safety codes, and fire codes that it asserts are applicable to the Project, along with copies thereof by March 14, 2014.” *Procedural Order* (Feb. 20, 2014) at 5.

3. On February 26, 2014, the Office of the Fire Marshal, through its attorney, filed a motion to modify the Fire Marshal’s procedural schedule and requested that the

Committee establish the same discovery procedures and hearing date for the Fire Marshal as established for all other parties. *Partially Assented-To Motion to Modify the Procedural Order Dated February 20, 2014* at 2.

4. The procedural schedule requested by the Fire Marshal calls for any party seeking suspension/revocation or enforcement of the Certificate (Moving Parties) to file its prefiled testimony by June 30, 2014. *Id.* at 3. Said schedule requires that Groton Wind file its prefiled testimony at a later date (*i.e.* not later than 20 days after the Moving Parties' Technical Session.) *Id.* at 4.

5. Given that the Procedural Order indicates that the Fire Marshal's prefiled testimony is to be filed *before* Groton's code identification filing, and given that there has been no ruling on the Fire Marshal's motion to modify the procedural schedule, good cause exists for modifying the procedural schedule to extend the deadline for Groton Wind's code filing. For the reasons set forth below, Groton Wind should not be required to make its code filing until after the Fire Marshal's Office submits its prefiled testimony.

6. Groton Wind is currently working to resolve the Fire Marshal's issues, with the hope that settlement with the Fire Marshal can be reached and litigation of the Fire Marshal's issues can be avoided. In these circumstances, no useful purpose is served by requiring Groton Wind to identify its litigation position (concerning the applicability or inapplicability of code provisions) at this juncture. Moreover, such identification would be premature and would run afoul of basic due process principles. As a moving party in a proceeding before the SEC, the Fire Marshal bears the burden of proving the legal and factual allegations that form the basis of his complaints against Groton Wind. *See* N.H. Admin.R. Site 202.19(a) ("The party asserting a proposition shall bear the burden of

proving the truth of the proposition by a preponderance of the evidence.”) Because the Fire Marshal’s Office has not yet submitted its prefiled testimony, requiring Groton Wind to make its filing in advance of the Fire Marshal’s prefiled testimony would be procedurally improper and contrary to the process discussed at the January 30, 2014 prehearing conference in this docket. *See, e.g.*, Tr. Jan. 30, 2014, at 87 (comments of Senior Assistant Attorney General Brooks: “...the Fire Marshal has the burden of submitting all of the information it thinks is pertinent...And, then, the Applicant has 30 days to respond with all the same and say why it –either the codes don’t apply or why it’s actually met the requirements...”).

7. In view of the foregoing, Groton Wind respectfully submits that in the event the Fire Marshal’s issues are litigated, the earliest time that Groton Wind should be required to make its code filing is the date upon which Groton Wind submits its prefiled testimony concerning the Fire Marshal’s issues.

8. In accordance with SEC Rule Site 202.14 (d), the undersigned has made a good faith effort to obtain concurrence with the relief sought herein from the parties to this docket. As of the time of finalizing this motion, the following parties have indicated their positions on it: Counsel for the Public cannot concur; the Buttolph/Lewis/Spring Intervenor Group objects; Intervenor Mark Watson objects; and no other party responded.

WHEREFORE, Groton Wind respectfully requests that the Committee:

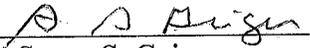
A. Modify the Procedural Order to require that the State Fire Marshal shall submit its prefiled testimony prior to the filing by Groton Wind, LLC of its statement identifying applicable building codes, life safety codes, and fire codes, and that the

earliest date for such submission by Groton Wind is the date upon which it submits its prefiled testimony regarding State Fire Marshal issues; and

B. Grant such further relief as it deems appropriate.

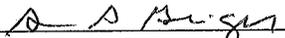
Respectfully submitted,
Groton Wind, LLC
By and through its Attorneys,
ORR & RENO, P.A.

Dated: March 14, 2014

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2014, copies of the within Motion were sent to persons named on the Service List either by electronic mail or first class mail, postage prepaid.


Susan S. Geiger

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