

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 FOR REHEARING/RECONSIDERATION OF
PROCEDURAL ORDER REGARDING
FILING CERTAIN CORRESPONDENCE BETWEEN
THE OFFICE OF STATE FIRE MARSHAL AND GROTON WIND, LLC**

NOW COMES Groton Wind, LLC (“Groton Wind”) and respectfully moves the New Hampshire Site Evaluation Committee (“Committee” or “SEC”) or its Presiding Officer to reconsider the portion of the February 20, 2014 Procedural Order in this docket which requires Groton Wind and the State Fire Marshal to file an exhibit containing all of the correspondence between those parties. In support of this Motion, Groton Wind states as follows:

1. By order dated February 20, 2014, the Presiding Officer directed Groton Wind and the State Fire Marshal to file an exhibit containing all of the correspondence between the Office of the Fire Marshal and Groton Wind by February 28, 2014.

2. On February 27, 2014, Groton Wind (by and through Attorney Nguyen) filed a letter seeking an extension until March 28, 2014 of the February 28, 2014 filing deadline to allow Groton Wind and the State Fire Marshal sufficient time to coordinate on the issue of filing confidential information.

3. Counsel for the Public filed an objection to the above-referenced extension request, indicating among other things, that March 14, 2014 is a reasonable filing deadline.

4. In October of 2013, Groton Wind and the State Fire Marshal each submitted to the Committee documents consisting of correspondence between Groton Wind and the Fire Marshal's Office. *See Office of the Fire Marshal's Confirmation of Correspondence* (Feb. 18, 2014) at ¶¶ 2-3.

5. The Office of the Fire Marshal has confirmed that, to the best of its knowledge, its October 18, 2014 filing contains all of the correspondence between the Office of the Fire Marshal and Groton Wind through the date of the October filing. *Id.* at ¶ 5. Groton Wind concurs with the State Fire Marshal's confirmation, and respectfully submits that the Fire Marshal's October 18, 2014 filing should constitute the exhibit referenced in paragraph 1, above.

6. Groton Wind has been working with the State Fire Marshal's Office to resolve, without further litigation, that Office's concerns about the Groton Wind Project. In furtherance of settlement, Groton Wind and the State Fire Marshal have exchanged electronic mail correspondence and other documents since October 18, 2014.

7. Groton Wind submits that it would be inappropriate to disclose to the Committee or third parties correspondence constituting settlement discussions regarding matters pending before the Committee. *See, e.g.,* N.H. Code of Admin. Rules Puc 203.20(a) ("All participants in settlement conferences shall treat discussions at settlement conferences as confidential and shall not disclose the contents of such discussions to third parties or seek to introduce them into evidence.") In addition, the documents in question are exempt from disclosure under RSA 91-A for the following reasons:

A. These documents were sought pursuant to the Fire Marshal's enforcement authority. Because the issue of said authority is being litigated before the SEC,

disclosure of Groton Wind's thoughts regarding settlement would deprive Groton Wind of a right to fair or impartial adjudication. In these circumstances, the documents should not be disclosed. *See 38 Endicott Street North, LLC v. State Fire Marshal*, 163 NH 656 (2012).

B. Because they relate to the settlement of cross claims regarding the State Fire Marshal's enforcement authority that are pending before the SEC, the documents concern matters that have been properly discussed in non-public sessions. *See RSA 91-A:3, II (e)*. As such, the documents are confidential and entitled to exemption under RSA 91-A:5, IV.

C. Disclosure of these documents would cause substantial harm to Iberdrola's competitive position. For example, if Iberdrola's thoughts regarding installation of the fire suppression system being discussed with the State Fire Marshal were publicly disclosed, this information could adversely affect Iberdrola in other jurisdictions that currently do not require such systems. In addition, Iberdrola's thoughts about the particular system under consideration could undermine its bargaining position with the manufacturer, thereby increasing costs which would harm Iberdrola's competitive position in the competitive electricity market. The information is therefore exempt from disclosure *See Hampton Police Ass'n v. Town of Hampton*, 162 NH 7 (2011).

D. One of the documents concerns a third party's commercial information and was marked confidential when it was submitted to the State Fire Marshal. In addition to the above-described confidentiality arguments that apply to this document, the document is commercial information that is exempt from disclosure under RSA 91-A:5, IV.

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: Attorney Dianne Martin, counsel for the Fire Marshal's Office, does not concur but will not be filing an objection; 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. Reconsider and clarify its February 20, 2014 Procedural Order to indicate that said Order does not require Groton Wind or the State Fire Marshal to file correspondence relating to settlement discussions concerning the Fire Marshal's claims in this docket; 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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