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DEPARTMENT OF JUSTICE**

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March 21, 2014

Jane Murray, Secretary  
NH Site Evaluation Committee  
New Hampshire Department of Environmental Services  
29 Hazen Drive  
Concord, New Hampshire 03301

Re: Application of Groton Wind, LLC  
Docket No. 2010-01

Dear Ms. Murray:

Enclosed please find the original and one copy of the Fire Marshal's Pre-filed Testimony in the above-captioned case.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary C. Evans".

Mary C. Evans  
Legal Assistant  
Transportation & Construction Bureau  
(603) 271-3675

mce  
Enclosure  
cc: Service List (electronic mail only)  
1019737

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**APPLICATION OF GROTON WIND, LLC  
NO. 2010-01**

**Pre-filed Testimony  
Ronald D. Anstey, on behalf of the State of New Hampshire,  
Department of Safety, Office of the Fire Marshal**

**Please state your name, official title, and the name and address of your place of employment.**

Ronald D. Anstey. Section Chief and Investigator, NH State Fire Marshal's Office,  
Department of Safety, Office of the Fire Marshal, 33 Hazen Drive, Concord, NH 03301.

**How long have you been employed there?**

I have been with the Office of the Fire Marshal for the past seven years.

**Describe your duties and responsibilities in that role.**

I am responsible for enforcement of the State Fire Code and State Building Code, code interpretation, plans review, and managing the day to day operations of the section, including assignment of personnel and administrative functions.

**What is your professional background and experience prior to joining the Office of the Fire Marshal?**

Prior to becoming employed at the Office of the Fire Marshal, I was the Captain and Fire Marshal with the Londonderry Fire Department for thirteen years. I was second in command of the Department. I was responsible for the development and implementation of the fire prevention program. I also directed the daily operations of the fire prevention and communications divisions. Some of my duties included code development, code enforcement, budget preparation, purchasing, and personnel management. Before that, I served on the Londonderry Fire Department for 14 years, first as a professional firefighter, then a lieutenant, then a Captain/Shift Commander, and finally as a Captain and Fire Marshal.

**What professional certifications do you have?**

I am a certified Fire Inspector, ICC, Certified Fire and Explosion Investigator, NAFI Certified Building Official, ICC, Certified Building Inspector, ICC, Certified Plans Examiner, ICC, Certified Commercial Inspector, ICC, Certified Firefighter, Level III, State of New Hampshire and have been certified as an expert witness in Superior Court.

I am also a member of the National Association of Fire Investigators, International Association of Arson Investigators, N.H. Association of Fire Chiefs, N.H. Fire Prevention Society, N.H. Building Officials Association , and ICC-International Green Construction Code, Energy and Water committee member.

I have an associate's degree in fire science, a bachelor's degree in management, and a master's degree in ministry. I also graduated from the New Hampshire Police Academy, and have received specialized training at Saint Anselm College, New York Academy of Fire Science, the National Fire Academy, Emmitsburg, Maryland, the National Mine Health and Safety Academy, and New Mexico Tech. (EMRTC).

**What is the purpose of your appearance and testimony before the Site Evaluation Committee ("SEC")?**

To inform the Committee of the Groton Wind's (the "Applicant") non-compliance with the fire, safety, and building codes contrary to the requirements of the Applicant's Certificate and to clarify the Office of the Fire Marshal's position as to the application of the codes.

**Have you reviewed the Application of Groton Wind, LLC for a Certificate of Site and Facility?**

Yes.

**In the Application, was the Office of the Fire Marshal included as a state agency having jurisdiction to regulate any aspect of the construction or operation of the proposed facility?**

No.

**Was the Office of the Fire Marshal notified by the Committee of the Application?**

No.

**When did the Office of the Fire Marshal become aware of the Application of Groton Wind, LLC for a Certificate of Site and Facility?**

The Office of the Fire Marshal became aware of the project late in 2010.

**What is the Office of the Fire Marshal's authority to regulate the Groton Wind, LLC project?**

The Fire Marshal has the authority to regulate the Groton Wind project and enforce the fire code and the building code at the site pursuant to RSA Chapter 153 and RSA 155-A:2,7. RSA 153:4-a, I makes the Fire Marshal responsible for supervising and enforcing all laws of the state relative to the protection of life and property from fire, fire hazards and related matters. The Fire Code, adopted by the State of New Hampshire as law in RSA 153:1, is one of the many laws relative to the protection of life and property from fire that the Fire Marshal is responsible for supervising and enforcing. The fire code includes the entire National Fire Protection Association ("NFPA") 1, the entire NFPA 101 (Life Safety), and any other national code, model code, or standard referenced therein. As the authority with explicit jurisdiction to enforce the code, the fire code recognizes the Fire Marshal is an Authority Having Jurisdiction (hereinafter referred to as "AHJ") in NFPA 1, 1.3.2.3, 3. The Fire Marshal has authority to enforce all these laws, including the entire fire code, irrespective of the existence of any other authority at the local or state level. Moreover, pursuant to RSA 155-A:2, X, the Fire Marshal is the ultimate authority with regard to the fire code.

NFPA 1, Section 10.1.1. requires every new and existing building or structure to be constructed, arranged, equipped, maintained, and operated in accordance with the fire code. As a project involving new buildings and structures, the Groton Wind project was required by law to comply with the fire code.

Pursuant to NFPA 1, Section 1.7.11, the Fire Marshal has explicit authority "to require plans and specifications to ensure compliance" with the fire code.

In addition, in NFPA 1, Section 10.1.3, the fire code specifically requires that all new construction shall comply with the State Building Code. The Fire Marshal is explicitly authorized to enforce all provisions of the fire code, including Section 10.1.3. The Groton Wind project was new construction required to comply with the building code and the fire code authorized the Fire Marshal to enforce that compliance.

When the building code requires a certificate of occupancy, as it does in this case, NFPA 1, Section 1.7.13. provides that the certificate "shall not be issued" until approved by the Fire Marshal. These are just a few of the many provisions of the fire code that apply to the Groton Wind project that the Fire Marshal has the authority to enforce. RSA 153:7 provides that the Office of the Fire Marshal "shall discharge all duties and responsibilities as are delegated to the fire marshal by law." There is no exception for projects that are before the Site Evaluation Committee.

In addition to NFPA 1, Section 10.1.3, the Fire Marshal has authority to regulate the project and enforce the building code for the Groton Wind project pursuant to RSA 155-A:7. The version of RSA 155-A:7, I in effect at the time this project commenced, and at the time the certificate was issued, provided that "The local enforcement agency appointed pursuant to RSA 674:51 shall have the authority to enforce the provisions of the state building code, provided, however, that where there is no building inspector, the state fire marshal or the state fire marshal's designee shall have the authority to enforce the provisions of the state building code..." RSA 155-A:7. The Groton Wind project is located in the Town of Groton, New Hampshire. The Town of Groton had no building inspector at the time the project commenced, at the time the Certificate was issued, nor does it currently have one.

The Fire Marshal undertook the role of the building inspector for this project in 2010 pursuant to RSA 155-A:7. As a result, all of the requirements of the building code fell within the authority of the Fire Marshal for this project, and the Applicant was thereafter required to submit to the

authority of the Fire Marshal for purposes of both the fire code and building code. In any event, the Fire Code requires that all new construction shall comply with the building code and the Fire Marshal is authorized to enforce the fire code.

**Are there Building Code requirements for the Town of Groton, New Hampshire?**

Yes. The Building Code is adopted as state law in RSA Chapter 155-A and applies statewide. State law, not the local community, establishes the minimum occupancy requirements, and these apply to the Town of Groton and every other city and town in the State of New Hampshire. For example, the State Building Code, Section 111.1 provides that no building or structure shall be used or occupied until the building official has issued a certificate of occupancy therefor as provided herein. This requirement applies statewide.

Whether or not a local community has a building code inspector has no bearing on whether construction must comply with the codes. State law as set forth in RSA 155-A:2, I is very clear that all buildings, building components, and structures constructed in New Hampshire must comply with the state building code and state fire code. Even the design is governed by the building code.

The Fire Marshal's authority to regulate the project and enforce the fire code and the building code is mandatory and remains in cases where the Site Evaluation Committee is involved. RSA 162-H:12 confirms that state agencies having jurisdiction retain all of its powers and duties of enforcement.

**What did the Office of the Fire Marshal do when it learned of the project?**

The Office of the Fire Marshal assigned responsibility for the project to me. I immediately began to review the project and the requirements related to the Committee process and the project in general. Because the Committee was involved in this project, the Office of the Fire Marshal expected to work in cooperation with them. As a result, a list of conditions required by the Office of the Fire Marshal for the Groton Wind project was prepared.

**Thereafter did the Office of the Fire Marshal inform the Committee of its jurisdiction and conditions required by the Fire Marshal related to the Certificate?**

Yes. The Fire Marshal informed the Committee in writing, by letter dated October, 17, 2010, of the Office's jurisdiction to regulate an aspect of the project pursuant to its authority in RSA 153:4-a to supervise and enforce all laws of the state relative to the protection of life and property from fire, fire hazards, and related matters. In addition, the Fire Marshal made clear that he was invoking RSA 155-A:7 to enforce the provisions of the State Building Code and assuming the role of building inspector for this project.

The Office of the Fire Marshal informed the Committee that it required the following conditions with regard to the project:

1. All Structures, including but not limited to towers, nacelles, operation and maintenance buildings be constructed in accordance with the following codes and standards:  
  
International Building Code, 2009 Edition.  
  
NFPA1, 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 ensure 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.

It was the Office of the Fire Marshal's understanding that the Committee was required, pursuant to RSA 162-H:16, to incorporate in a Certificate any conditions specified by the Office of the Fire Marshal, as a state agency having jurisdiction under state law to regulate an aspect of the construction or operation of the facility.,

**Why did the Office of the Fire Marshal require these conditions?**

1. Compliance with the fire code and the building code is required by RSA 153:1 and RSA 155-A:2, I.
2. Submission of plans and review and approval is specifically required for new construction by the Fire Code in NFPA 1, Section 1.7.11 and 1.14.
3. Given the unique features involved in the project, it was anticipated that technical assistance may be required. NFPA 1.15.1 permits requirement of such assistance at the Applicant's expense.
4. In this case, given the difficult access to the turbines caused by the location on the property, the topography, the grades of the roads, the excessive height of the structures, and the increased fire risk during fire season, the Office of the Fire Marshal exercised the authority granted to it in the Fire Code at NFPA 18.2.3.1.4. to require additional fire protection features in the turbines, including fire suppression in the nacelles. Fire Department access roads are required for every facility pursuant to NFPA 18.2.3.1. NFPA 1, 18.2.3.4.1. mandates that access roads must have an unobstructed width of not less than 20 feet. In addition, the grade requirement for an access road generally must not exceed 5% unless the design limitations of the fire apparatus provide otherwise. In any case, the angle of approach and departure and the turning radius of an access road is subject to approval by the AHJ, in this case the Fire Marshal. NFPA 18.2.3.4.6.1 states that the gradient for a fire department access road shall not exceed the maximum approved. The roads installed to access the turbines on the Groton Wind site do not meet

these requirements of the Fire Code and are not approved. As a result, they do not constitute access roads as required by the Fire Code. When fire department access roads cannot be installed due to things like location on the property, topography, and nonnegotiable grades, all of which are present at the Groton Wind plant, the Fire Marshal is authorized to require additional fire protection features. After reviewing NFPA 850, one of the additional fire protection features the Fire Marshal required is fire suppression in the nacelles.

**Did the Office of the Fire Marshal receive notice of further proceedings or the hearing before the Committee regarding this Application?**

Not to my knowledge. If I had been aware of the hearing I would have attended.

**Were you informed by the Applicant or the Committee that the Application was granted?**

No.

**Prior to construction of the Groton Wind buildings and structures, did you receive plans for review from the Applicant?**

No.

**Prior to the use and occupancy of the buildings and structures at the Groton Wind plant did Groton Wind seek or obtain an occupancy permit for the plant?**

No.

**When were you informed that the Application had been granted and the project had moved forward?**

In early April, 2013, Attorney Iacopino emailed me requesting that I attend a meeting in Groton, NH regarding issues that had come up with the project. I was very surprised to learn that not only had the Certificate been issued but that the plant was up and running at that time without having complied with the requirements of the codes and without an occupancy permit.

**Did you attend the meeting?**

I attended the meeting on April 24, 2013.

**What happened at the meeting?**

There was a discussion about the inaccessibility to the site, particularly to the turbines, caused by the grade of the access roads and the lack of winter maintenance, including plowing, of the access roads. These issues had resulted in concerns and difficulties for emergency responders. At the meeting I informed Attorney Iacopino, and Mark Epstein and Susan Geiger, the Iberdrola representatives that were present, that the Office of the Fire Marshal had never received the plans for review as required by the fire and building codes, that the plant was violating the law by operating without an occupancy permit, and that the project remained a construction site. I was informed that Mark Epstein would get me whatever was needed.

**Did you receive the documents as promised?**

No. I did not receive the documents as promised. I followed up with Mark Epstein and he again promised they would be delivered. Despite repeated requests I did not receive a complete set of the required documents. The Applicant refused to comply with the lawful requests of the Fire Marshal and employed an apparent strategy of delay and ignorance to avoid compliance with the law.

**What action did you take?**

I informed the Fire Marshal and the Committee of the Applicant's non-compliance with the requirements of the fire and building codes. During my research I had also discovered that Edward Cherian from Iberdrola had testified to the Committee that the Office of the Fire Marshal had refined its position on fire suppression and only required compliance with the intent of the codes not the actual specifications. As a result, I also informed the Committee that that was not true. I did not waive the requirements of the code for the Groton Wind project.

**How did you inform the Committee?**

By letter dated August 12, 2013.

**At the time of the August 12, 2013 letter to the Committee, what were the violations of the fire and building codes that you were aware of?**

1. Failure to submit a complete set of plans for review and approval consistent with both the fire code and the building code.
2. Designing and constructing all of the structures at the site without notifying the Fire Marshal and without any of the reviews, inspections or approvals required by the fire code and building code.
3. Occupying and operating the structures on site without inspection or approval and without an occupancy permit.
4. Failure to involve the Fire Marshal in the development of the fire protection design as required by the fire code.
5. Failure to provide fire suppression in the nacelles as required by the Fire Marshal.

**Since the August 12, 2013 letter, did you become aware of any other violations of the applicable codes at the Groton Wind, LLC project?**

Yes.

**What are they?**

1. A letter is required to be submitted from the licensed New Hampshire architect or engineer responsible for the design certifying it complies with the 2009 edition of the International Energy Conservation Code pursuant to RSA 155-D:4. The letter was not provided.
2. A letter is required to be submitted from the licensed New Hampshire architect or engineer responsible for the design certifying the design complies with the New Hampshire Barrier Free Design Code and applicable ADA Design Guidelines pursuant to RSA 155-A:5-a. The letter was not provided.
3. Full size prints are required to be submitted for review, as many items cannot be verified without being able to review the dimensions provided on the architectural drawings. Full size plans were not provided.

4. Drawings are required to be stamped by the licensed professional responsible for the design pursuant to the IBC Section 107.1. None of the drawings were stamped, except the Butler Building design drawings, which excluded the foundation design, and list of special inspections.
5. The list of special inspections provided on the structural drawings should have been accomplished, reviewed, and stamped by the respective engineers. The Applicant failed to provide the required documentation establishing compliance with these requirements.
6. A one hour fire-rated separation wall between the separate occupancies in the structure is required pursuant to NFPA 1, 6.1.14.4 and NFPA 101, 38.1.2. The garage and the office space are separate occupancy classifications. The wall as constructed fails to meet the fire-rated separation requirement.
7. Door openings between the garage and the office space must be protected in accordance with the NFPA 1, 6.1.14.4 and NFPA 101, 38.1.2. The facility failed to have proper fire-rated doors within the wall structure.
8. Multiple penetrations exist in the wall between the garage and the office space. The wall fails to completely separate the occupancies as required.
9. The wall between the garage and the office space failed to extend all the way from the floor to the roof deck above without penetrations. The wall as constructed fails to meet the fire-rated separation requirement.
10. The emergency lighting provided outside the exits did not comply with requirements of 2011 edition NFPA 70, National Electric Code, as it requires dual lamp fixtures.
11. The battery calculations, voltage drop calculations and manufacturer's cut sheets for the fire alarm system are required pursuant to NFPA 1, 13.7.3.2.1 for the fire alarm system and were not provided.

12. The Applicant failed to provide documentation that the fire alarm system is compliant with all required components and functions pursuant to NFPA 1, 13.7.3.1 and NFPA 72.
13. The fire notification procedure does not comply with NFPA1, 10.7.1, 10.7.1.3, and 10.7.1.4.
14. Calculations from a mechanical engineer for the intake and exhaust louver were not provided.
15. The mechanical drawings did not include any piping or details on the installation of equipment.
16. The wall mounted smoke detector in the records room was not installed in the proper location as required by the fire code in NFPA 72.
17. The wall mounted smoke detector in the SCADA room was not installed in the proper location as required by the fire code in NFPA 72.
18. The smoke detector in the manager's office was mounted too close to the diffuser. The detector must be mounted at least 3 feet from the diffuser pursuant to NFPA 72.
19. The smoke detector in the conference room was mounted too close to the diffuser. The detector must be mounted at least 3 feet from the diffuser pursuant to NFPA 72.
20. The emergency light in the shower room is obstructed in violation of NFPA 70.
21. The Flammable Liquid Storage cabinet inside the structure was not externally vented as required by NFPA 30.
22. The exterior diesel fuel storage tank and pump was not protected from vehicular damage as required by NFPA30A.

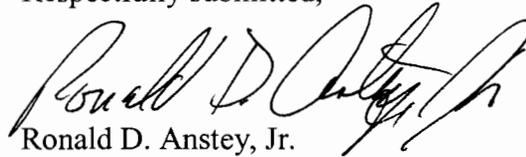
**How did you become aware of these violations?**

Based on the plans review and the site view on January 24, 2014.

**Has the Applicant come into compliance with the codes since you filed the letter with the Committee on August 10, 2013?**

Since the beginning of 2014, there have been periods of cooperation, and representations that actions are being taken by the Applicant to come into compliance with the codes. However, compliance has yet to be achieved. At this time most of the violations remain outstanding. In addition to the above, there is still no fire suppression in the nacelles at this time and the plans for installation are as yet unconfirmed. A compliance inspection of the O&M building and all other structures, including the turbines, will be required before compliance can be confirmed and an occupancy permit will be issued.

Respectfully submitted,



Ronald D. Anstey, Jr.