

Orr&Reno

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April 14, 2015

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

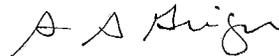
Re: Groton Wind, LLC – Docket No. 2010-01

Dear Ms. Murray:

Enclosed for filing with the Site Evaluation Committee in the above-captioned docket please find an original and 2 copies of Groton Wind, LLC's Memorandum Regarding March 30, 2015 Procedural Order and Suggested Hearing Agenda.

Please contact me if there are any questions about this filing. Thank you for your assistance.

Very truly yours,



Susan S. Geiger

Enclosures
cc: Service List (electronic mail only)
Ms. Lori Davis (electronic mail only)
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THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2010-01

RE: GROTON WIND, LLC

GROTON WIND, LLC'S MEMORANDUM
REGARDING MARCH 30, 2015 PROCEDURAL ORDER
AND SUGGESTED HEARING AGENDA

Groton Wind, LLC ("Groton Wind"), by and through its attorneys, submits this memorandum pursuant to electronic mail correspondence dated April 1 and April 2, 2015 to the remaining parties (i.e. Groton Wind, Counsel for the Public Peter Roth, and Intervenor Mark Watson) from Attorney Michael Iacopino, Counsel for the Site Evaluation Committee ("the Committee" or "SEC). Among other things, the April 2nd electronic mail message indicated that the March 30, 2015 procedural order in this docket overlooked Mr. Walker's prefiled testimony. It also briefly summarized positions of the remaining parties that had been expressed to Attorney Iacopino and suggested that memoranda would assist in the organization of the hearing and assist SEC members in focusing on the issues of importance to each party.

I. Procedural Order Errors/Omissions

Groton Wind respectfully notes that the March 30, 2015 Procedural Order and Notice of Final Public Hearing ("Procedural Order") overlooked the following:

- Groton Wind's December 4, 2013 Motion to Amend the Certificate, as indicated on the first and last pages of said Motion, is triggered only "in the event that the SEC determines that Groton Wind should have sought SEC approval of revised site plans that were submitted to and approved by the New Hampshire Department of Environmental Service ("DES")." Although

this issue has been briefed, the SEC has never ruled on it. Accordingly, this Motion is not ripe for consideration.

- Groton Wind submitted the prefiled testimony of Peter Walker in support of the above-referenced Motion. Thus, the statement on page 10 of the Procedural Order indicating that there is no pending prefiled testimony is erroneous.

- Groton Wind filed a set of plans with the Committee on March 10, 2014 which provides a comparison of the Project's original site plans with as-built plans.

- Groton Wind filed an Emergency Plan with the Committee on June 20, 2014 which was accepted by the State Fire Marshal. *See Office of State Fire Marshal's Report on the Status of the Applicant's Compliance with the Compliance Agreement* (June 9, 2014) at ¶ 6.

- Groton Wind filed two affidavits with its Reply Brief dated January 6, 2014 rebutting statements of Investigator Anstey which alleged that Groton Wind's representatives made untrue statements at the adjudicatory hearing. *See Procedural Order* at 5.

II. Suggested Agenda for April 20, 2015 Hearing

Groton Wind respectfully suggests that the SEC consider the outstanding issues in this docket in the following order at the April 20th hearing:

A. Uncontested Filings and Motion

- 1. Fire Marshal's Compliance Agreement and Final Report.** These filings fully resolve the fire and safety issues raised by the State Fire Marshal and related claims by others. No party has objected to this agreement or the report. Accordingly, the SEC should accept the Compliance Agreement and Final Report as fully satisfying

any and all fire or safety issues raised by the State Fire Marshal and similar/related claims made by others.

2. **Motion to Approve Agreement with Town of Groton.** This motion is unopposed; Counsel for the Public and the Buttolph/Lewis/Spring intervenor group have withdrawn their objections. The amended agreement with the Town of Groton addresses the winter road maintenance issue to the satisfaction of the Town of Groton. In addition, as indicated in the Procedural Order at page 3, the Town of Rumney has indicated that it does not have any outstanding issues regarding winter maintenance and site access. In these circumstances, the Motion to Approve should be granted.

B. Outstanding Filings

1. **Environmental Health and Safety Plan.** The need to review and approve this plan is unclear. The Plan is arguably moot in light of the provisions of the Fire Marshal's compliance agreement, the amendment of the Town of Groton Agreement, and the Emergency Plan. However, if the SEC determines that it must consider this Plan, Groton Wind submits that it should be approved.
2. **Motion to Approve Settlement Agreement.** The agreement between Counsel for the Public and Groton wind fully resolves all of Public Counsel's complaints against Groton Wind and should be approved. RSA 541-A:38 provides that "informal settlement of matters by non-adjudicative processes is encouraged." Accordingly, there is no need to litigate any claims that have been resolved by this agreement. The Committee should approve the Settlement Agreement because it resolves a significant dispute between the parties, ending what would

be costly and time-consuming litigation with an uncertain outcome. The Settlement Agreement achieves a satisfactory and just result, in that it acknowledges the satisfaction of claims by several property owners near the project, it acknowledges the resolution of claims by the State Fire Marshal, and it provides an important benefit to the public by means of a substantial contribution to DRED for the additional protection or enhancement of the Livermore Falls area.

3. Motion to Amend Certificate.

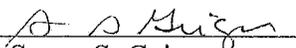
As indicated above, this Motion indicates by its terms that it is contingent upon a finding by the Committee that it – not DES- should have reviewed Groton Wind's revised site plans. The Committee has not made that finding, and need not do so. The Settlement Agreement with Public Counsel dispenses with the need to litigate or adjudicate that question. In addition, the Committee need not undertake a review of the revised plans. The record in this case reveals that DES conducted that review and provided Groton Wind with confirmation that it could proceed with the minor modifications depicted on the revised site plans dated October 28, 2011. *See Contested Motion of Groton Wind, LLC to Amend Certificate of Site and Facility* (Dec. 4, 2013), *Attachment 2*. Thus, this Committee need not undertake a separate review. In the alternative, if the Committee determines that it must amend Groton Wind's Certificate of Site and Facility, Groton Wind respectfully submits that it may do so on the papers and need not conduct an evidentiary hearing. However, if the Committee determines that it must conduct

an evidentiary hearing, Groton Wind respectfully requests that it be allowed to supplement its filings after the April 20th hearing if necessary.

Respectfully submitted,

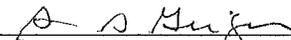
Groton Wind, LLC
By and through its Attorneys,
ORR & RENO, P.A.

Dated: April 14, 2015

By: 
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Certificate of Service

I hereby certify that on this 14th day of April, 2015, a copy of this Memorandum was provided to the Service List in this docket by electronic mail.


Susan S. Geiger

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