

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2010-01**

**Application of Groton Wind, LLC for a Certificate of Site and Facility  
for a Renewable Energy Facility in Groton, New Hampshire**

**REPORT OF PREHEARING CONFERENCE AND  
TECHNICAL SESSION AND PROCEDURAL ORDER**

**Issued June 25, 2010**

**PREHEARING CONFERENCE**

On June 7, 2010, a Prehearing Conference was held in the above entitled matter at the Offices of the Public Utilities Commission. Thomas Getz, Chairman of the Public Utilities Commission and Vice Chairman of the Site Evaluation Committee, acted as presiding officer. The following appearances were noted: Susan Geiger and Douglas Patch from Orr & Reno representing the Applicant, Groton Wind, LLC; Peter Roth, appearing as Counsel for the Public; Laura Spector and the Mitchell Municipal Group representing the Town of Groton; Bernard H. Waugh and Gardner, Fulton & Waugh representing the Town of Rumney; Richard Wetterer of Rumney, *pro se*; and, Cheryl Lewis of Rumney, *pro se*.

Chairman Getz reviewed the procedural history of the docket and explained the statutory time frames that apply to the docket. Chairman Getz then asked each of the parties appearing at the prehearing conference to give a brief summary of their positions with regard to the Application.

Ms. Geiger argued that the Applicant had filed an extensive Application that complies both with RSA 162-H and the rules of the Committee. She asserted that the Application presented sufficient information for the Committee to determine that a Certificate of Site and Facility should be granted to Groton Wind, LLC.

Mr. Roth, Counsel for the Public, advised that he intended to carry out his statutory obligation to represent the interests of the public. To date, he has not formed an opinion with respect to the Application.

Ms. Spector reported that the Town of Groton generally supports the granting of a Certificate and is in the process of pursuing agreements with the Applicant.

Mr. Waugh reported that the Town of Rumney has not yet determined its position with respect to the Application. He also advised that the Town of Rumney continues to negotiate with the Applicant regarding the Town's concerns.

Mr. Wetterer indicated that he is opposed to the Application based on health concerns. He contended that the proposed Facility is too close to where people live and will cause adverse health effects on those who live in proximity to the proposed Project.

Ms. Lewis indicated that she owns a campground business in the Town of Rumney. She expressed concern about the impact of the proposed Facility on her business and the environmental impacts that it will cause for the entire region.

Thereafter, Chairman Getz identified the pending Motions to Intervene as follows: Annie Valdmans, Dr. Lawrence A. Mazur, the Town of Groton, Richard Wetterer, Kathleen Park, Christine G. DeClercq-Mazur, Sarah Mazur, the Town of Rumney, Carl S. Spring, James M. Buttolph and Cheryl Lewis. After identifying the pending Petitions to Intervene, it was noted that the Applicant had filed a response to those petitions on June 7, 2010. The Applicant advised that it did not object to the Motions filed by the Town of Rumney or the Town of Groton. However, the Applicant did object to the petitions of the various residents of the Town of Rumney. The Applicant asserted that the residents did not meet the intervention standard as set forth in RSA 541:32 and NH Code of Administrative Rules, Site 202.11. The Applicant complained that none of the Rumney residents had identified facts establishing a substantial interest in the outcome of the proceedings. Counsel for the Applicant also argued that any concerns of the residents of the Town of Rumney could be adequately represented by either the Town of Rumney or Counsel for the Public.

Counsel for the Public objected to the Chair hearing argument on the Petitions to Intervene. He argued that there was not sufficient notice that such arguments would be heard at the prehearing conference. The objection of Counsel for the Public was overruled inasmuch as the public notice issued on May 21, 2010 clearly indicated that consideration of intervention would occur at the prehearing conference. Likewise, counsel to the Committee had also notified all interested parties by e-mail that intervention issues would be taken up at the prehearing conference.

Thereafter, Counsel for the Public argued that the intervention requests of the various residents of the Town of Rumney should be granted and that they should be consolidated for the purposes of the adjudicatory proceedings. The Town of Groton, through Attorney Spector, took no position on the Motions to Intervene filed by the Rumney residents. Attorney Waugh, on behalf of the Town of Rumney, also took no position with regard to the Motion of the various residents of the Town of Rumney to intervene. Both Attorney Waugh and Attorney Roth advised the Committee that ultimately each of them could be in a position that may be adversarial to the concerns of the various residents of Rumney who have sought intervention.

Chairman Getz, after hearing argument, advised that he was inclined to grant the intervention petitions but to consolidate the residents of Rumney because their concerns were similar and they presented consistent positions with respect to the Application. Chairman Getz instructed counsel for the Committee to attempt to work out

the details of a combined participation of the Rumney residents during the course of the technical session and to seek possible agreement in this regard.

### TECHNICAL SESSION

The prehearing conference was adjourned and the parties retired to a technical session for the purposes of attempting to establish a procedural schedule for the balance of this docket. At the conclusion of the technical session, the following procedural schedule was agreed upon by all parties present:

June 28, 2010	Site Visit/Grafton County Public Hearing
July 2, 2010	<b>Deadline:</b> Data Requests from Intervenors to Applicant.
July 6, 2010	<b>Deadline:</b> Data Requests from Towns of Rumney, Groton and Plymouth to Applicant.
July 9, 2010	<b>Deadline:</b> Data Requests from Counsel for the Public to Applicant.
July 12, 2010	<b>Deadline:</b> Applicant answers to Intervenor Data Requests due.
July 19, 2010	<b>Deadline:</b> Applicant answers to Counsel for the Public Data Requests and Data Requests from the Towns due.
July 26, 2010	<b>Deadline:</b> State Agency progress reports due (91 days-day 90 weekend).
August 9, 2010	Tech Session No. 1 (Applicant's witnesses) (Time and place to be determined.)
August 17, 2010	<b>Deadline:</b> Answers to Tech Session No. 1 Data Requests due.
August 31, 2010	<b>Deadline:</b> Intervenors and Counsel for the Public to disclose witnesses and file pre-filed testimony.
September 8, 2010	<b>Deadline:</b> Applicant's Data Requests to Intervenors and Counsel for the Public due

September 22, 2010	<b>Deadline:</b> Answers to Applicant's Data Requests due from Counsel for the Public and Intervenors.
September 27-28, 2010	Tech Session No. 2 (Intervenor and Counsel for the Public witnesses) (Time and place to be determined.)
October 4, 2010	<b>Deadline:</b> Answers to Tech Session No. 2 Data Requests due from Counsel for the Public and Intervenors to Applicant.
October 12, 2010	<b>Deadline:</b> All supplemental pre-filed testimony due.
October 25, 2010	<b>Deadline:</b> State Agency Final Reports due (182 days-day 180 weekend).
October 29, 2010	Final Pre-Hearing Conference (Time and place to be determined.)  <b>Deadline:</b> All exhibits must be marked and filed by this date.  <b>Deadline:</b> Supplemental pre-filed testimony due from all parties (pertaining to state agency final reports only).
November 1-5, 2010	Adjudicatory Proceedings (reserve 7 days). These dates are tentative. A separate Order and Notice will issue. (Time and place to be determined.)

### PETITIONS TO INTERVENE

Petitions to Intervene were timely filed by the Town of Groton, the Town of Rumney and the following residents of the Town of Rumney: Annie Valdmanis, Lawrence Mazur, Richard Wetterer, Kathleen Park, Christine G. DeClerq-Mazur, Sarah Mazur, Carl S. Spring<sup>1</sup>, James M. Butolph and Cheryl Lewis. On June 7, 2010, the Applicant filed a consolidated response to the petitions to intervene. On June 10, 2010, the Town of Plymouth filed a Motion for Leave to File a Petition to Intervene. The Applicant responded on June 15, 2010, indicating that it had no objection to the Town of Plymouth's motion so long as its intervention does not delay the proceedings.

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<sup>1</sup> The request to intervene filed by Mr. Spring included other members of his household, Susan M. Barickman and Paul S. Spring.

On June 16, 2010, James M. Buttolph filed a letter responding to the Applicant's objection and seeking additional relief. In his letter Mr. Buttolph renewed his motion to intervene. He also requested that if he is required to be consolidated with other intervenors that he be consolidated in a group consisting of himself, Carl Spring, and Cheryl Lewis. Mr. Buttolph also objected to any limitation on the scope of his intervention and requested revised dates for the delivery of data requests. It should be noted that Mr. Buttolph did not appear at the duly noticed pre-hearing conference that was held on June 7, 2010. The Applicant filed an objection to relief requested in Mr. Buttolph's letter on June 18, 2010.

The New Hampshire Administrative Procedure Act provides when an administrative agency must allow intervention. See, RSA 541-A:32, I. The statute also sets forth circumstances under which an administrative agency may allow intervention, but is not required to do so. See, RSA 541-A:32, II.

RSA 541-A:32, I, requires that a petition for intervention be granted if:

- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
- (b) The petition states facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
- (c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

The statute also permits the presiding officer to allow intervention "at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32, II.

Similarly, New Hampshire Code of Administrative Rules, Site 202.11, requires that a petition to intervene be granted if:

- (1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's order of notice of the hearing, at least 3 days before the hearing;

(2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and,

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

The rules also provide that the presiding officer shall grant one or more late-filed petitions to intervene upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

The Administrative Procedure Act and the Committee's procedural rules thus provide that intervention is mandatory in those cases where the party can establish that it has a right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in the proceeding. The statute and the rule also provide for permissive intervention in those cases where the presiding officer determines that intervention is in the interests of justice and does not interfere with the prompt and orderly conduct of the proceeding.

The Administrative Procedure Act and corresponding procedural rules also allow the presiding officer to place limits on an intervenor's participation. See, RSA 541-A:32, III and N.H. Code of Administrative Rules, Site 202.11(d). The presiding officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the purposes of the proceeding so long as the limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention.

**Town of Groton.** The proposed facility is located entirely within the Town of Groton. Participation of local municipalities is consistent with RSA 162-H:16, IV(b), requiring the Committee to give due consideration to the views of municipal and regional planning agencies and municipal governing bodies with respect to the orderly development of the region. Therefore, the Motion of the Town of Groton to intervene in this docket is granted.

**Town of Rumney.** No portion of the proposed site is within the boundaries of the Town of Rumney. However, the Facility is in close proximity to the town line and a number of Rumney residents are either abutters or in very close proximity to the

proposed site for the Facility. See, Application Section C, Fig. 4, Supplemental Information filed April 22, 2010. Likewise, the Applicant intends to gain access to the site through roads which are located within the Town of Rumney. See, Application, Section C, Fig. 3. The close proximity of the proposed Facility to the Town of Rumney and its residents, and the use of the Town of Rumney's roadways for access constitute a substantial interest in the outcome of these proceedings. Therefore, the Motion of the Town of Rumney to intervene in these proceedings will be granted.

**Town of Plymouth.** Plymouth, like Rumney, either abuts or is in close proximity to the proposed site. See, Application Section C, Fig. 4, Supplemental Information filed April 22, 2010. The construction transportation route is proposed to travel, at least partially, through the town of Plymouth. See, Application, Section C, Fig. 3. These factors create a substantial interest in the outcome of the proceedings. Therefore, the Town of Plymouth is granted intervention.

**Rumney Residents.** The Rumney residents suggest in their filings that they have concerns about the effect of the proposed Facility on the environment of the Baker Valley and on the health, safety and welfare of the public. Each of the Rumney residents asserts that he or she lives in close proximity to the proposed site and will suffer individualized harm, either as a result of perceived health and safety issues, or by virtue of the reduction of the value of their real property.

Under the circumstances, each of the Rumney residents expresses a sufficient interest to allow intervention. However, because they are concerned about the same or similar issues and are similarly situated, it is likely that the separate intervention of each resident could lead to unnecessary repetition and interfere with the prompt and orderly conduct of the proceedings. Therefore, the Rumney residents shall be required to "combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings" as provided in RSA 541-A:32, III. (c).

While the interests expressed by the Rumney residents are similar, James M. Buttolph, Cheryl Lewis and Carl S. Spring specifically request that they not be consolidated with the other Rumney residents. In addition, Mr. Buttolph requests that the deadline to file data requests with the Applicant be extended.

Normally, consolidation of similarly situated residents as a single group would resolve concerns about promptly conducting an orderly proceeding. However, in this case it may be in the interest of an orderly proceeding to consolidate the Rumney residents into two groups. As a result, Mr. Buttolph's request will be granted. The first

group will include Mr. Buttolph, Ms. Lewis and the Springs. The second group will include the Mazurs, Ms. Park, Ms. Valdamis and Mr. Wetterer.

In the absence of legal representation by a lawyer admitted to practice in New Hampshire, each group shall designate one resident to be the spokesperson for the group at any hearing. Likewise, each group shall be consolidated for the purpose of presenting and cross-examining witnesses and the filing of any memoranda. One resident from each group shall also be designated to examine witnesses and file any written documents.

With respect to Mr. Buttolph's request to extend the initial deadline for discovery by the Rumney residents, the Rumney residents shall have until July 6, the same date as the Towns, to file data requests. Correspondingly, the Applicant shall have until July 19 to provide data responses, the same date that responses are due from the Applicant to the Towns and Counsel for the Public. In addition, the parties are reminded that this proceeding is subject to strict statutory time requirements, which makes it unlikely that the procedural schedule could be further revised in any material respect. Finally, to the extent the action of any party is contrary to the relevant procedures or interferes with the orderly conduct of the proceeding, such actions will be addressed as they may arise.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the procedural schedule agreed to by the parties at the technical session shall apply to this docket, with the two exceptions explained above; and it is

**FURTHER ORDERED**, that the following procedures will apply to all parties and filings:

1. All data requests propounded must be copied to all parties in order to avoid duplication of requests. One copy shall be copied to counsel to the Committee. Data requests shall not be filed with the Committee.
2. Responses to data requests will be copied to all parties in the proceeding, with one copy to counsel for the Committee. However, answers to data requests shall not be filed with the Committee.
3. All pleadings, petitions, motions, exhibits, memoranda or other documents filed by any party with the Committee shall be filed with the Office of Commissioner Burack through Jane Murray, Secretary to the Committee. The filer shall file the original and nine (9) copies. Copies of all pleadings, petitions, motions, exhibits, memoranda or other documents shall be served on all other parties and persons listed on the Service List, other than Committee or Subcommittee members.

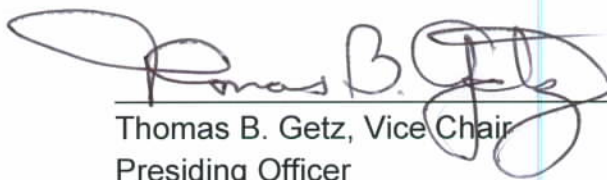


4. Service of all documents relating to the proceeding upon parties and the Service List shall be made by electronic mail unless a party or person listed on the service list has indicated an inability to receive service by electronic mail, in which case service shall be made by first class mail, postage prepaid. See, New Hampshire Code of Administrative Regulation Site 202.07(c). **Parties shall refrain from communicating directly with Subcommittee members by e-mail or otherwise.**
5. If a party serving documents does not have the ability to serve them by electronic mail, service shall be made by first class mail, postage prepaid, in the United States mail. See, New Hampshire Code of Administrative Regulation Site 202.07(d).
6. All parties and persons to be noticed shall, upon receipt of this Report, provide the complete service information including regular address and electronic mail address to Jane Murray at the Department of Environmental Services ([jane.murray@des.nh.gov](mailto:jane.murray@des.nh.gov)). Any party wishing to be excused from the requirement of electronic service shall provide a statement indicating whether or not they are able to receive documents and send documents in this docket via electronic mail.
7. All filings (whether filed electronically or conventionally) shall contain a certification that the filing has been copied to all parties on the Service List (exclusive of Committee and Subcommittee members). The service requirements in this docket and under the rules shall apply to parties only. The term "parties" as used herein includes all intervenors.
8. Data requests and responses to data requests shall not be published on the Committee's website unless they are subsequently admitted as exhibits in this proceeding.
9. All pleadings, motions, petitions and other formal requests for action by the Committee in this docket, as well as all Orders in this docket, will, as time permits, be posted to the Committee's website.
10. All parties shall comply with the New Hampshire Code of Administrative Regulation Cite 202 to the extent that such regulations are consistent with this Procedural Order.
11. The Presiding Officer may supplement or revise these procedures as appropriate to the prompt and orderly conduct of the proceeding; and it is

**FURTHER ORDERED**, that the Petitions to Intervene of the Towns of Groton, Rumney and Plymouth are granted; and it is

**FURTHER ORDERED**, that the Petitions to Intervene filed by Annie Valdmanis, Dr. Lawrence A. Mazur, Richard Wetterer, Kathleen Park, Christine G. DeClercq-Mazur, Sara M. Mazur, Carl S. Spring, Susan M. Barrickman, Paul S. Spring, James M. Buttolph and Cheryl Lewis are granted without limitation of participation to designated issues but subject to consolidation as described herein.

So Ordered this 25<sup>th</sup> day of June, 2010.

  
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Thomas B. Getz, Vice Chair  
Presiding Officer