

**THE STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

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**In the matter of the  
Application for Certification  
Pursuant to RSA 162-H of  
GROTON WIND LLC**

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**Docket No. 2010-01**

**SPRING/LEWIS/BUTTOLPH GROUP OF INTERVENORS RESPONSIVE COMMENTS  
TO APPLICANT'S PARTIAL OBJECTION TO MOTION OF COUNSEL FOR THE  
PUBLIC FOR LEAVE TO RETAIN CONSULTANTS**

The Spring/Lewis/Buttolph Group of Intervenors ("Intervenors") fully supports Counsel for the Public's "Motion for Leave to Retain Consultants and for an Order Directing Groton Wind LLC and Iberdrola Renewables, Inc. to Bear The Costs" ("the Motion"). We disagree with a number of complaints filed with the Site Evaluation Committee ("Committee") by Groton Wind LLC ("the Applicant") in its partial objection to the Motion and are compelled to respond herein. Further, we ask the Committee to strike paragraph D of the Applicant's objection from the record.

We hope our comments below prove useful as the Committee deliberates on this important matter.

1. As indicated in paragraph 7 of the Motion, the Intervenors fully assented to Counsel for the Public's July 28 Motion requesting the Committee to approve retention of the three expert consultants identified in his motion and the terms of their hire. Specific to Mr. Tocci, we have read his scope of work and associated fees and believe them to be reasonable and prudent after reading the Applicant's sound analysis and given the proximity of the Applicant's proposed project to residential and populated areas.

2. RSA 162-H:10, V provides that "The site evaluation committee and counsel for the public shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter...". In his objection, the Applicant complains that a portion of Mr. Tocci's proposed scope of work ("measure the background sound level during quieter winter months") involves a study, and that any "studies or investigations" not jointly conducted by the Committee and Counsel for the Public are prohibited

by statute. We firmly disagree. Pursuant to Section 162-H:9, Counsel for the Public "shall be accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action." To argue that any and all studies proposed by Counsel for the Public in furtherance of his duties can only be conducted if done jointly with the Committee would be contrary to this section. No other parties are so restricted. We recognize that Counsel for the Public holds a special role in these proceedings. We argue that the provision to allow joint studies was not meant to limit his role. On the contrary, it was meant to expand his role by allowing occasions when Counsel for the Public can work with the Committee to develop the evidentiary record, a privilege not afforded any other party by statute. The statute also allows both the Committee and Counsel for the Public to "employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter...". No stipulations are placed on such employment other than to require for the costs to be approved by the Committee and borne by the Applicant. Since the statute defines different duties for the Committee and Counsel for the Public we would not expect the same consultants, legal counsel, or staff to be hired jointly. For example, the Committee did not jointly hire Attorney Iacopino.

3. The Applicant argues that their sound consultant has already conducted sound surveys and that Mr. Tocci's work would be duplicative and therefore unreasonable and of questionable value. This is not true. It is clear from Mr. Tocci's scope of work that the Applicant's background sound level studies were performed during a period of high insect activity and when foliage was present. These conditions can result in background sound levels that are artificially higher than normally present. If background sound levels reported by the Applicant are elevated due to foliage and insect activity, the true impact of sound emissions from the turbines cannot be properly assessed. Mr. Tocci recommends that sound levels be recorded during periods of quiet. These data would be new and in addition to the sound levels recorded by the Applicant and not at all duplicative. Mr. Tocci's work does not repeat work already conducted.

4. The Applicant objects to six sound monitoring locations in Mr. Tocci's scope of work, as opposed to the four measured in the Applicant's study. Since background sound levels can change significantly from receptor to receptor over a large project area, there is nothing unreasonable about adding two more monitors. This is especially true given the number of homes that will potentially be impacted by turbine noise. According to Mr. Tocci, the cost to collect the sound

levels at six monitored locations is \$8000. The incremental cost of the two added locations does not appear unreasonable, particularly if it means providing the Public, and presumably the Committee, with a more accurate understanding of noise impacts.

5. The Applicant's argument that Mr. Tocci's proposal "incorrectly assumes that ambient sound levels during the winter will be quieter" is without merit. The Applicant points to the sound levels from the Lempster wind facility as his proof -- two project sites that are completely different and are located miles apart. Without additional information other than the Applicant's own opinion, there is no basis to claim background sound levels at the project site in winter or summer are remotely related. Finally, to claim that winter sound data is of questionable value since "residents in the vicinity of the project are unlikely to keep their windows open during winter months" suggests the Applicant does not understand the purpose of collecting background sound levels or that he may have biased the conclusions of his own sound studies by assuming people limit their access to the outside to specific months of the year.

6. We respectfully ask that the Committee strike Paragraph D of the Applicant's objection from the record. In this paragraph, the Applicant provides testimony that would normally be limited to prefiled testimony and subsequent adjudicative hearings. We are not qualified to respond to this testimony, a job better suited for Mr. Tocci. Permitting this one-sided argument to stay in the record without providing a reasonable opportunity to respond is unfair to other parties in this case. We ask that this testimony be removed from the record and reintroduced, if desired by the Applicant, when the docket schedule permits.

7. Mr. Tocci's proposal is comprehensive including professional charges to cover data requests, prefiled testimony, attendance at one technical session, etc. for a total cost of \$29,500. The price allocated to measuring post-foliage background sound levels is only \$8000. The Applicant insists that Mr. Tocci's price be limited to \$10,000 which is an amount that they allege is "more in line with the expense that the Applicant has already incurred." What Groton Wind LLC paid their consultant is irrelevant to these proceedings. Further, we have no way of knowing the agreement between Iberdrola, Groton Wind LLC, or their noise consultant or what terms were negotiated. To apply this same figure to another consultant is not appropriate. Finally, the Applicant claims the amount paid their consultant covered the cost of the survey but they do not list any additional

charges invoiced by their consultant to cover data requests, prefiled testimony, attendance at any technical sessions, or the evidentiary hearing. In looking at the totality of Mr. Tocci's scope of work we believe the cost is reasonable.

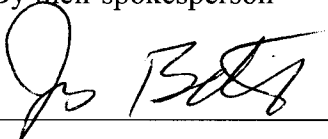
In view of the above comments, we respectfully ask that the Committee:

- a. Honor the Motion submitted by Counsel for the Public in its entirety;
- b. Grant Counsel for the Public the flexibility he needs to conduct his duties as outlined by statute, including hiring consultants of his choosing;
- c. Find that Mr. Tocci's pricing is reasonable given the totality of the work to be performed;
- d. Strike Paragraph D from the Applicant's objection letter; and
- e. Grant such other relief as may be just.

Respectfully submitted,

The Intervenors

By their spokesperson



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James Buttolph

I, James Buttolph, do hereby certify that I caused the foregoing to be sent by electronic mail or U.S. mail to the persons on the currently active service list for docket 2010-01 (exclusive of Committee members).