

**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  
October 17, 2010**

**BUTTOLPH/LEWIS/SPRING GROUP OF INTERVENORS OBJECTION  
TO APPLICANT'S MOTION *IN LIMINE* TO EXCLUDE THE  
TESTIMONY OF MICHAEL McCANN**

The Buttolph/Lewis/Spring Group of Intervenors ("Intervenors") strongly objects to the Applicant's October 8, 2010 motion (the "Applicant") to exclude the testimony of Michael McCann ("the Motion").

1) As noted in paragraph 2 of the Applicant's motion, Mr. McCann is a certified and licensed General Real Estate Appraiser, with five years' experience working with wind energy projects. However, in spite of this expertise, the Applicant attempts to argue in various places within their motion that Mr. McCann's testimony is "irrelevant and immaterial to the instant docket, [and] ... should be excluded from the record." The Applicant states in paragraph 1 of their motion that the Intervenors submitted documents from Mr. McCann that consisted of the following: a letter dated August 31, 2010 to the Site Evaluation Committee<sup>1</sup>, an exhibit containing contingencies and limiting conditions of his assignment, a certification signed by Mr. McCann, and a letter (with accompanying appendices) addressed to a County Board in Illinois. However, the Applicant has neglected to mention another exhibit in Mr. McCann's prefiled testimony. This exhibit is a letter, dated December 14, 2009, written by Mr. McCann to Mr. Ben Hoen of the Ernest Orlando Lawrence Berkeley National Laboratory ("LBNL"). The subject of this letter is "The Impact of Wind Power Projects on Residential Property Values in the United States: a Multi-Site Hedonic Analysis" ("the LBNL study"). This is the study that was included in the application under Appendix 37 upon which the Applicant vests their entire argument with respect to the impacts of wind projects on property values.

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<sup>1</sup> The Applicant points out that Mr. McCann's testimony is not "in the usual question and answer format". We are unaware of any rule in this docket requiring any witness to follow this format.

2) In this letter of December 14, 2009, Mr. McCann documents, in paragraph 2, the following summary comment: “With all due respect, the final Report falls short of being a truly objective and reliable real estate value study of the issue at hand, in my professional opinion, the reasons for which I will begin to describe in this follow up review”. It is disturbing to realize that the Applicant is attempting to silence a critical review of their application by an individual that they acknowledge to be a certified realtor. Even more importantly, it is critical to point out that Mr. McCann is listed in the “Acknowledgements” section of the Applicant’s LBNL study. On page viii in Appendix 37, the following comment can be found: “For reviewing drafts of this report and/or providing comments that helped shape the early thinking on this project, the authors thank ... Mike McCann (McCann Appraisal)...”. It is clearly preposterous for the Applicant to attempt to argue that the testimony of an expert that contributed to their own application is irrelevant to these proceedings.

3) In paragraph 5, the Applicant declares “They have not established that Mr. McCann has been licensed, accredited or otherwise recognized as a qualified real estate appraiser by any New Hampshire authority.” This carefully worded statement on the part of the Applicant is overly simplistic and clearly irrelevant. Following is the pertinent exchange between the Applicant and Mr. McCann during discovery:

*Applicant: (1-6): Please identify any licenses issued to you by the State of New Hampshire*

*Mr. McCann: None. As disclosed beneath my signature and in my professional biography I am a Certified General Real Estate Appraiser licensed in my home state of Illinois.*

*However, licensing requirements are mandated at the federal level and duplication of the parallel requirements for New Hampshire licensing is unnecessary and redundant, since both States require compliance with USPAP for ANY property value opinions. I am in compliance with said USPAP requirements. However, I note that the LBNL report and its authors are not in compliance with USPAP and do not certify or provide their opinions under oath, even though they meet the requirements for what constitutes an "appraisal", by virtue of opining as to real estate value issues.*

4) During the discovery process, the Buttolph/Lewis/Spring intervenor group submitted a data request to the Applicant as follows:

*The following requests relate to the Appendix 37 analysis titled “The Impact of Wind Power Projects on Residential Property Values in the United States: A Multi-Site Hedonic Analysis”*

- a.) Please provide the definition of “Valid Sales” for properties included in the data set.*
- b.) Please provide copies of the peer reviews of the analysis, including the contact information and credentials of the reviewers, with specific focus on the reviewers’ credentials relating to professional real estate evaluation.*
- c.) Please confirm whether or not the reviewers listed in response to “b” above requested copies of the raw data, and whether or not these requests were complied with. Please explain why data were not released in those cases where requested data were not released.*
- d.) Please provide a list of the acknowledged limitations of the analytical approach alluded to in paragraph 1, page xi in the referenced study.*
- e.) Please provide an example of what the applicant would consider to be a metric that would represent a “consistent, measurable, and significant” indicator of a home sale price. Please provide this example in the context of an actual study.*
- f.) What is the basis for the generalization that a coefficient of determination ( $r^2$ ) value of .77 indicates that a model is performing “well”? (pg 28).*
- g.) How does the referenced study consider and include the existence of homes in the proximity of wind farms that are placed on the market for sale but do not, or did not, sell at any price?*
- h.) In the context of the definitions used in the analysis for “Vistas”, what percentage of privately owned land within the 10 mile radius around the proposed turbines defined as the visual study area have vistas characterized as “Poor Vistas”, “Below Average Vistas”, “Average Vistas”, “Above Average Vistas,” and “Premium Vistas” in the opinion of the applicant?*

The applicant responded as follows:

*Groton Wind did not conduct the referenced study. See the Application at Volume IV, Appendix 37 for details on how the analysis was conducted by the Lawrence Berkeley National Laboratory.*

5) It is clear that the Applicant is unable to answer even the most basic questions about their real estate study. However, we were successful at locating an expert who contributed to their study so that some of these questions might be answered. Therefore, it seems clear that the Committee and the parties, including the Applicant, could gain a great deal of insight into this study because we have provided, at our personal expense, Michael McCann who is the only expert in this docket who has direct knowledge of, and has made direct contributions to, Appendix 37 in this application. Conversely, should the Committee sustain the motion of the Applicant and exclude Mr. McCann's testimony from the record, or bar him from participation at the adjudicative hearing in person, or bar him from participation via teleconference or videoconference, it follows that the effect of this action would be to exclude the only expert testimony available on the Applicant's study. As such, the entire Appendix 37 should be excluded from the record. The Applicant argues that Mr. McCann's testimony is irrelevant because he has never been to the project site although they acknowledge his expertise and experience with wind projects. Ben Hoen, primary author of the LBNL study, has not been presented as an expert witness at these proceedings. As such, his experiential relevance to the specifics of this docket, if any, is completely unknown. In fact, none of the test areas evaluated by the Hoen/Wiser report were located in New England – let alone New Hampshire. The Applicant has not demonstrated that the LBNL study has any relevance to the New Hampshire real estate market or to the specifics of this project whatsoever.

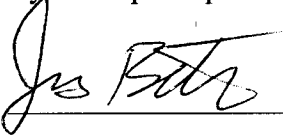
In view of the above comments, we respectfully ask that the Committee:

- a.) Deny the motion from the Applicant to exclude from the record the written documents constituting the prefiled testimony of Michael McCann.
- b.) Deny the motion from the Applicant to bar Mr. McCann from testifying (either in person or via teleconference or videoconference) at the adjudicative hearing.
- c.) Should the Committee decide to sustain either of the above listed motions of the Applicant, we respectfully ask that the Committee exclude from the record the written documents constituting Appendix 37 of the application in its entirety.
- d.) Grant such other and further relief as deemed just and proper.

Respectfully submitted,

The Intervenors

By their spokesperson

A handwritten signature in black ink, appearing to read "James Buttolph", written over a horizontal line.

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).