

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

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

**Docket No. 2010-01
October 18, 2010**

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

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

1) As noted in paragraph 2 of the Applicant's motion, the Groton Wind Farm was not directly referenced in the written testimony that was included as an attachment to prefiled testimony submitted on August 31, 2010 by the undersigned. However, I did articulate under oath a fact not contained in documents that Dr. Nissenbaum's views with respect to the Groton Wind Farm are identical to those expressed in his Red Lily study that was included in the attachment. Obviously, it is not possible to report specifically on medical impacts associated with the Groton Wind Farm because the wind farm has not yet been constructed. Therefore, by necessity, the only existing testimony relative to wind farm impacts on human health relates to studies at other wind farms.

2) The Buttolph/Lewis/Spring intervenor group, acting on good faith, had every intention of facilitating Dr. Nissenbaum's presence at both the technical sessions and the adjudicative hearing as an expert witness in this docket. Nevertheless, the Applicant correctly asserts in paragraph 6 of their motion that Dr. Nissenbaum did not provide responses to the Applicant's data requests, nor did Dr. Nissenbaum attend technical sessions held September 27 and 28. There are two primary explanations for this absence, as follows:

3) First, as the technical session date approached, it became clear that Dr. Nissenbaum's time was consumed by his efforts on a new study relative to the impacts of wind turbines on human health that will be peer reviewed and more extensive than the study referenced in prefiled testimony on

this docket. Our understanding is that this new study is nearly complete. Secondly, it became clear that the intervenor group of Buttolph/Lewis/Spring was not able to afford the financial commitment required to secure Dr. Nissenbaum's testimony at this point in this docket. We are both disappointed and perplexed that our efforts have not, as of yet, been successful at ensuring an additional medical expert's specific testimony relative to reports about impacts of sound and vibration among humans within close proximity to existing wind farms. Nevertheless, to suggest that testimony about such impacts at other wind farms should be declared "irrelevant and immaterial to the instant docket...." and therefore "should be excluded from the record" is inappropriate.

4) The Buttolph/Lewis/Spring intervenor group concedes that due to the aforementioned reasons, as it stands today, it would be inappropriate to bring forward Dr. Nissenbaum to testify in the adjudicative hearing without the applicant and other parties having the opportunity to exert their pleadings relative to their rights to due process. Notwithstanding my comments as noted by the Applicant that our group "kept open the possibility of bringing Dr. Nissenbaum forward to participate in the proceedings at a later date", we have no current plans to present Dr. Nissenbaum to the Committee as an expert witness in this docket. However, should conditions change, such as the late publication of an appropriate study of Dr. Nissenbaum that is pertinent to this docket, we may chose to file a motion to allow Dr. Nissenbaum's testimony at that later date while recognizing that it would be inappropriate to plan for his participation without an affirmative ruling from the Committee.

5) Our concern is that the Applicant's remedies (i.e. having this testimony "excluded from the record", and making a premature ruling that bars Dr. Nissenbaum from testifying at the adjudicative hearing) are overly restrictive of the flexibility that the Committee needs to retain in order to ensure that justice is served. Rather, it is our position that it would be appropriate for the Committee to relegate Dr. Nissenbaum's testimony that has already been given to the category of public input. Regarding participation at the adjudicative hearing, it is our position that it would not be inappropriate to order a remedy that excludes testimony under the current conditions, while leaving open the opportunity for parties to bring forward to the Committee a pleading that may result in a reversal of this order should changing conditions warrant.

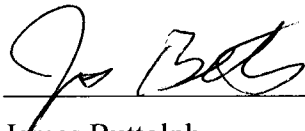
In view of the above comments, we respectfully ask that the Committee:

- a.) Deny the motion from the Applicant to exclude from the record the written documents from Dr. Nissenbaum that were filed on August 31, 2010.
- b.) Deny the motion from the Applicant to bar Dr. Niessenbaum from testifying at the adjudicative hearing.
- c.) Issue a ruling that would allow for future flexibility on the part of the Committee, conceivably allowing Dr. Niessenbaum to participate at the adjudicative hearing should circumstances change.
- d.) Grant such other and further relief as deemed just and proper.

Respectfully submitted,

The Intervenors

By their spokesperson



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).