

**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 20, 2010**

**BUTTOLPH/LEWIS/SPRING GROUP OF INTERVENORS RESPONSIVE
COMMENTS TO APPLICANT'S OBJECTION TO MOTION TO ALLOW FOR
PARTICIPATION OF EXPERT WITNESS VIA TELECONFERENCE OR
VIDEOCONFERENCE**

With respect to the Applicant's objection ("objection") to the Buttolph/Lewis/Spring Group of Intervenor's (the "Intervenor's") motion to allow for participation of expert witness via teleconference or videoconference, we hereby offer the following additional comments to assist the Committee in issuing an order on this critical matter.

1) As noted in both the Applicant's motion of October 8, 2010 regarding Michael McCann¹, and our objection to said motion on October 17, 2010, Michael McCann is a certified appraiser who has substantial experience both with wind farm impacts on property values and real estate appraisal in general. Notwithstanding the Applicant's motion¹ to exclude Mr. McCann's testimony, his contribution represents the only testimony from a witness who has articulated any credible knowledge, other than superficial knowledge obtained by simply reading documents included in Appendix 37 of the Groton Wind application.

2) In paragraph 3 of his objection, the Applicant states that "due process generally requires live witness testimony at administrative hearings where credibility is at issue." No party to these proceedings has raised doubt as to Mr. McCann's credibility nor has the Applicant provided any information that would suggest that credibility of this witness is an issue.

¹ As noted in the Intervenor's strong objection to the Applicant's motion to exclude Michael McCann's testimony from the record (dated October 17, 2010), the Applicant attempted to argue that Mr. McCann's testimony is irrelevant to these proceedings. The Applicant's motion was made in spite of the fact that Mr. McCann's direct contribution to the creation of Appendix 37 is documented by the plain words of the application itself. As such, it is the position of the Intervenor's that the Applicant signed this motion in violation of Site 202.06 (b) (3).

3) The rules of evidence for these proceedings are aimed at gathering as much information about the proposed application as possible so that the Committee can make an informed decision. The inclusion of Mr. McCann's testimony will contribute to the development of a complete record from which the Committee can determine the full impact of the project on residential property values. If the Intervenors are required by the Committee to incur the expenses of travel and board for Mr. McCann as well as any lost income due for hours he has to commit to travel, such financial burden is certain to overwhelm our efforts. We may have no other choice but to withdraw Mr. McCann as a witness.

4) According to SEC Site 202:21, "All testimony shall be under oath or affirmation, and shall be subject to cross-examination by parties or their representatives." The rules are silent on requiring the presence of the witness in the room. Under both State and Federal Constitution, all citizens are entitled to due process of law when interacting with quasi-judicial agencies of government. Such due process, at its core, is the opportunity to be heard. Our financial limits will prohibit our ability to have expert representation before the Committee. To force Mr. McCann's presence in the hearing room would have the effect of limiting our ability to be heard.

5) Paragraph 5 of the Applicant's objection states: "the New Hampshire Supreme Court has held that *hearing panel* members must be physically present for witness testimony to properly evaluate credibility." The Applicant maintains that this is an "analogous" situation, but the Applicant has included a clearly irrelevant citation. Regarding panel members, SEC rules only require that a quorum be present. As such, by the Applicant's own example, the point is made that laws and rules governing SEC proceedings are markedly different from the Applicant's case law citation.

6) Paragraph 6 of the Applicant's objection states the opinion that allowing Mr. McCann to testify via telephone or videoconference would infringe upon the Committee's ability to thoroughly evaluate his testimony. The Intervenors hasten to point out, once again, that the Committee has flexibility to adjust the rules as needed to provide for a more complete record as long as any actions do not unduly interfere with the prompt and orderly conduct of the proceedings. We assure the Committee that Mr. McCann's remote participation will not unduly delay the proceedings and that the information provided by Mr. McCann will offer information not previously heard in either the Lempster Wind or the Granite Reliable Wind proceedings. The Committee has the ultimate authority to decide what to do with Mr. McCann's testimony even after said testimony is delivered

telephonically or via videoconference. If the Committee were to decide that the credibility of the presentation was at issue, or that the evaluation of the testimony is problematic due to the technological method of its delivery, there is absolutely no reason that the Committee could not disregard his testimony after the fact. However, eliminating this option now would have the deleterious effect of eliminating McCann from these proceedings and depriving the Committee and all of the parties of the only real estate expert that has been presented as witness on this docket.

7) In paragraph 7, the Applicant warns of hypothetical logistical concerns about referencing documents during testimony. When Mr. McCann testifies, all pertinent documents will have already been delivered to the Committee and all parties. Should there be any doubt about the veracity of this commitment, the Committee can easily require by rule the preliminary delivery of presentation documents in whatever format the Committee desires, presented with whatever methodology that the Committee deems most appropriate, and impose such rules as a condition of the approval of our motion. Not only is the Applicant raising concerns that can be easily mitigated by simple process directives, the Applicant does not provide a convincing argument to suggest that such concerns have merit in the first place. The referencing of documents while communicating via teleconference or videoconference is a routine accomplishment in everyday life.

8) In paragraph 10 of the objection, the Applicant opines that the Committee is not authorized to grant the relief requested by the Intervenors. This point made by the Applicant is not supported by the facts. The law provides the flexibility to the Committee to establish rules. As noted above in paragraph (4), the rules of this proceeding are silent on requiring the presence of witnesses in the room. However, should the Committee conclude that some portion of the Applicant's argument has merit with respect to administrative rules, one need look no further than Site 202.15 for any one of a number of provisions for Waiver of Rules, such as 202.15 (b) (1) which allows for waiver when "Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person."

9) Finally, it is appropriate to review the Applicant's filing history on this docket with respect to the treatment of Intervenors. With the first Applicant filing relating to the request for Intervenor status on June 7, 2010, the Applicant endeavored to bury us with inconsequential challenges. The Applicant endeavored to split hairs with respect to proper service of petitions. They cited a clearly

irrelevant SEC docket with the apparent assumption that we would not have the wherewithal to check the veracity. As the summer wore on, the Applicant continued with a pattern of intimidating behavior by burying us in a flurry of inconsequential data requests while arguing that our data requests were irrelevant. More recently, on October 8, 2010 the Applicant proceeded with a motion to exclude Michael McCann's testimony from the record, a motion that is without merit. In the currently referenced filing about a request for telephonic or videoconferencing, the Applicant proceeded to argue through a litany of nearly a dozen legal citations of dubious relevance. As Intervenors, we accept the responsibility to participate and are thankful to the Committee for granting us status. Due to our financial condition, we are unable to have legal counsel represent us and note that the State of New Hampshire does not require such representation. However, we simultaneously and respectfully trust in the ability of the Committee to perform the due diligence in the interest of justice to ensure that the Committee not inadvertently sustain, by mere virtue of the volume of ink on paper, motions on the part of the Applicant that we believe are harassing and intended to obstruct our ability to participate in these proceedings.

Thank you for your attention to this important matter. If we can provide additional information please do not hesitate to contact our spokesperson, Jim Buttolph.

Respectfully submitted,

The Intervenors

By their spokesperson

A handwritten signature in black ink, appearing to read "James Buttolph", is 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).