

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

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In the matter of the)	
Application for Certification)	Docket No. 2010-01
Pursuant to RSA 162-H of)	October 27, 2010
GROTON WIND LLC)	

**EMERGENCY MOTION TO SUSPEND HEARINGS AND MOVE
WITNESSES TO A LATER DATE AND TIME**

The party to this proceeding represented by the Intervenor Group Buttolph/Lewis/Spring (the "Intervenors") respectfully requests that the New Hampshire Site Evaluation Committee (the "Committee") issue an order to immediately suspend the entire week of hearings scheduled to begin November 1 and to move witnesses in that week to a time after the conclusion of the November hearing days.

The basis for this emergency motion includes the following:

(A) the abuse of discovery procedures by the Groton Wind LLC (the "Applicant") whereby critical details on project amendments were inappropriately withheld leaving no time for the Intervenors to review and comment on the changes;

(B) substantial details of the project plan remain undefined even at this late date thus placing the Intervenors, and other parties, in the untenable position of presenting their concerns based on an incomplete record;

(C) supplemental testimony regarding background noise levels and the possible impact of turbine noise on the Intervenors was provided too late for the parties to understand the information and appropriately prepare;

(D) no order has been issued by the Committee regarding the September 30, 2010 motion filed by the Intervenors requesting leave to present their expert witness, Michael McCann, through electronic means. The delay has created an unreasonable burden on the Intervenors to plan for the hearings.

(A) ABUSE OF DISCOVERY PROCEDURES

1. On June 25, 2010, the Committee issued a procedural order outlining the schedule agreed to by the parties present. One round of written data requests was included in the schedule for the Intervenors and the Applicant respectively, along with two technical sessions to be held on August 9-10 and September 27-28.

2. In accordance with the New Hampshire General Provisions governing discovery 35.e - Supplementation of Responses, the Applicant *"is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (a) he knows that the response was incorrect when made, or (b) he knows that the response, though correct when made, is no longer true."*

3. On July 6, 2010, the Applicant (Ed Cherian) provided the following responses to two data requests made by the Intervenors (responses in italic text):

Q(1): The applicant has proposed the transmission lines will run down Quincy Road to Fairgrounds Road in the application. Is this still the preferred route? Why ? What is the difference in cost of running the transmission lines down Quincy Road vs Route 25? If the transmission lines will be crossing the Baker River, where specifically will that take place? What easements are in place? Please provide all communications with the utility companies regarding the transmission lines and substations.

A(1). Groton Wind has not proposed any transmission lines for this project, only distribution lines rated at 34.5 kV. Groton Wind worked with the New Hampshire

Electric Cooperative to identify potential distribution line routes and selected the route identified in the Application based on assumptions regarding cost and length of line. The Applicant continues to work with NHEC to finalize the route. Potential routes include Route 25, Quincy Road, and others. Each alternative has advantages and disadvantages in terms of cost, difficulty in construction, length of route, and potential temporary disruption to area businesses and residents. In the event that the Applicant and NHEC determine that the final route is substantially different than the one identified in the Application, the Application will be amended to reflect the modified route. Groton Wind has no electric line easements in place at this time, save for the overall participating landowners, as listed in Volume II, Appendix 2. The Applicant respectfully objects to the last question as it is overly broad and unduly burdensome.

Q(2). Will the applicant supply its own transformer, bring the transmission lines to 115 kilovolts and apply for the permitting process? If so, where will the transformer be located?

A(2). Groton Wind will be solely responsible for any interconnection costs. Details on transformer upgrades or additions are under study.

4. Supplemental prefiled testimony submitted by Ed Cherian received on, and after October 13, states (page 3 at 6) that "in early September 2010, Groton Wind re-filed an interconnection application with the ISO-NE." The Project now proposes an alternate route for the line along private land adjacent to the project site leading to Route 25. Appendix 42, figure 6.a shows the alternate route. Details of the map, including the Alternate route depicted on the map are unreadable. No information has been provided the Intervenors beyond this unreadable map and Mr. Cherian's testimony.

5. The Project now requires construction of a substation at or near the existing Beebe River substation, a fact that was kept from the Intervenors.

6. The NH DES filings of October 8th were silent both on the exact location of the electrical lines as well as the environment impacts of constructing the substation. Failure to include this substantial change to the plan renders the NH DES filings premature and incomplete.

(B) PROJECT DETAILS REMAIN UNDEFINED

7. NH DES has negotiated a mitigation plan for wetland impacts based on revisions of the project plan that have not been submitted into the record. References to these revisions are mentioned in Appendix 44 of the Applicant's supplemental filing. Any justification for the type and magnitude of the mitigation package is entirely, and unfairly, omitted from the record. NH DES provides no explanation as to how parties outside these proceedings arrived at that the negotiated settlement.

8. The only submission in the record prepared by the New Hampshire Division of Historic Resources ("NH DHR") is a letter dated August 23, 2010 which notifies the Applicant that the *Area Form* prepared for the Project does not follow NH DHR guidelines and that the form lacks sufficient analysis and research necessary to place the resources within their "historic contexts". The Area Form referenced in NH DHR's letter was omitted from the Application record although the Applicant provided a web link to the file in response to a data request (<http://www.iberdrolarenewables.us/groton/pdf/PAF.pdf>).

8. Regarding Rumney, the Area Form states: "Due to the number of potentially significant resources, Berger [Dr. Hope Luhman et.al.] recommends further survey in the form of a *Historic District Form*." There is no information in the record that a Historic District Form was prepared by the Applicant. Dr. Luhman admits in her testimony that she's had no formal communications with NH DHR since April 5, 2010. She insists the project will not have an unreasonable adverse effect on historic properties but provides no such data to test her claim.

9. Pursuant to RSA 162-H:16 IV (c), the Committee is required to determine whether the project will have an unreasonable adverse effect on historic sites.

10. There is no information in the record to suggest Dr Luhman considered, or was even aware, that an alternate route for the transmission/distribution line was included in the Application. No information in her prefiled comments addresses on the effect of 13 +/- miles of electrical lines within Rumney and surrounding towns.

11. Dr. Luhman briefly refers to the Polar Caves located in Rumney in her Area Form as an important tourist attraction but completely ignores the historic and archeological significance of the caves and the potential risks to the area both aesthetically and structurally due to its immediate proximity to the Project.

12. Two letters are in the record from NH Fish and Game dated April 22, 2010 and October 25, 2010 respectively. Neither letter offers a summary of the Agency's findings or proposed recommendations. Rather, each explains that Fish and Game is still awaiting documents from the Applicant or received them too late to provide a timely response.

(C) BACKGROUND NOISE LEVELS

13. Supplemental prefiled testimony of acoustics expert, Gregory Tocci, was not received until late on October 22, 2010. Mr. Tocci's testimony documents issues of serious concern for the Intervenors. There is no time for the Intervenors to review and fully comprehend his findings prior to the hearings beginning.

(D) COMMITTEE DELAY IN ISSUING ORDERS

14. The Intervenors respect the fact that the Committee members carry out their duties as NH SEC members in addition to their regular workload for the State. The parties to this proceeding are required by Statute and Committee Rules to closely adhere to the procedural schedule or run the risk of interfering with the efficient and orderly process of the proceedings. The Committee's inability to rule on the Intervenor's September 30 motion has placed them in a very difficult position both financially and logistically. To arrange for our expert's presence at the hearing next week at this late date, whether in person or remotely, would place an unfair and unreasonable burden on those with limited means to respond quickly.

The above referenced information A, B, and C could have been used by the Intervenors in preparing any possible supplemental testimony. The Applicant's failure to produce documents in a timely manner, when the experts on many of the issues were scheduled to appear at the hearing next week cannot be justified. The attorneys for the Applicant are experienced in proceedings before the Committee and understand the intent and spirit of the discovery rules, which makes this issue particularly egregious.

It appears that the Applicant's delay in providing the information was a deliberate attempt to deny the parties a fair chance to challenge this inappropriate Project. But the ramifications of this act reach far beyond the parties. By withholding information as it did, the Applicant has grossly hindered the intent of these proceedings, i.e. to vigorously test the facts of the Project before the Committee. If this action is permitted to stand, it is ultimately the residents of Rumney, Plymouth and other surrounding towns and the region that will be harmed since they could not be assured that any resulting certification, should the Project be approved, will be based on the best available data.

Pursuant to NH Administrative Rule Site 202.14(d), the undersigned has made a good faith effort to obtain concurrence with the relief sought herein from all of the parties by e-mailing a draft copy of this motion to them and asking for their position on it. As of the time of this filing, we have received no responses from any of the parties.

For the reasons cited above, we believe it imperative that the Committee act on this motion prior to the prehearing conference scheduled for Friday, October 29.

We respectfully ask that this honorable Committee:

- A. Suspend the hearings scheduled to begin November 1, 2010.
- B. Move the hearings to a time that is mutually agreed upon by all parties and when the Applicant can assure the parties that the information missing will be available in time to allow for adequate review.

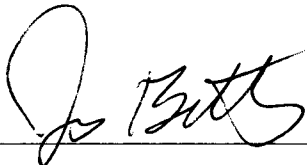
C. Suspending the hearings now will not have an adverse effect on the Applicant's development plan since the newly filed interconnection application with the ISO-NE has placed the Project near the bottom of the interconnection queue at position 345 thus pushing the project out to 4th quarter 2012.

D. Grant such further relief as it deems equitable and appropriate.

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.