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December 8, 2010

Via Hand Delivery. and Electronic Mail

NH Site Evaluation Committee
c/o Jane Murray, Secretary
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095


***Re: Docket 2010-01 Application of Groton Wind, LLC
for a Certificate of Site and Facility for a Renewable Energy Facility***

Dear Ms. Murray:

Enclosed for filing with the Site Evaluation Committee in the above-captioned docket, please find an original and eleven copies of the Applicant's Unassented-to Motion for Ruling on Jurisdiction/Scope by December 17, 2010.

Please contact me if there are any questions about this filing. Thank you.

Very truly yours,


Susan S. Geiger

cc: Parties (electronic mail only)

Enclosures

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Maureen D. Smith
(Of Counsel)

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2010-01

**RE: APPLICATION OF GROTON WIND, LLC
FOR A CERTIFICATE OF SITE AND FACILITY
FOR A RENEWABLE ENERGY FACILITY IN GROTON, NH**

**UNASSENTED-TO MOTION FOR RULING ON
JURISDICTION/SCOPE BY DECEMBER 17, 2010**

NOW COMES Groton Wind, LLC (“the Applicant”) by and through its undersigned attorneys and respectfully moves that the Site Evaluation Committee Subcommittee assigned to this docket (“SEC” or “Subcommittee”) issue a ruling on an issue raised in the filings made on November 19, 2010 by the Applicant¹, Counsel for the Public and the Intervenors in the above-captioned matter. That issue is whether the SEC has jurisdiction over: 1) the power line that will run within the New Hampshire Electric Co-operative’s distribution corridor; and/or 2) the facilities that will interconnect the line to the regional transmission grid, and if so, what the scope of the Subcommittee’s review will be. In support of this Motion, the Applicant states as follows:

1. The Scheduling Order issued by Vice Chairman Getz on November 29, 2010 stated that it was necessary for the SEC Subcommittee assigned to this docket “to meet

¹ A copy of the Applicant’s Procedural Proposal filed November 19, 2010 is attached to the within Motion. The Applicant wishes to note that in arguing that the Lempster Wind decision considered only the interconnection line’s impacts on the orderly development of the region, it relied upon the wording of the Committee’s February 8, 2007 Order on Motion of the Town of Goshen. Counsel for the Public has correctly pointed out, and has asked that the Applicant bring to the Subcommittee’s attention, that the Committee’s Order on the Lempster Wind Application made findings concerning the interconnection line’s impacts on aesthetics, historic sites and the orderly development of the region. The Applicant also notes that those findings were made by the SEC in the absence of any expert testimony on the line’s effects on aesthetics and historic sites.

and deliberate regarding the scheduling memoranda” filed by the Applicant, Counsel for the Public and some of the Intervenors. Those scheduling memoranda contained, *inter alia*, legal arguments on the issue of whether: 1) the power line that will run along Route 25 on the New Hampshire Electric Co-operative’s distribution line, and 2) the facilities that will interconnect that power line with the regional power grid, are subject to the Subcommittee’s jurisdiction. The Applicant has argued that the line and facilities are not jurisdictional, or in the alternative, that if they are jurisdictional, the scope of review is limited to their impact on the orderly development of the region. Counsel for the Public, on the other hand, has argued that the line and facilities are jurisdictional.

2. At the Subcommittee meeting held December 3, 2010, the Subcommittee discussed but did not make a decision on the above-referenced legal issue. Instead, the Subcommittee directed its Legal Counsel, Michael Iacopino, to work with the parties to schedule a prehearing conference and technical session for the purpose of developing a procedural schedule which would enable the parties and the Subcommittee to consider new information and supplemental prefiled testimony submitted by the Applicant on November 19, 2010 concerning the power line near the Project site that would bring power from the wind turbines to a point on the New Hampshire Electric Co-operative’s distribution line on Route 25.

3. Pursuant to the Subcommittee’s directive, Attorney Iacopino and the parties met after the deliberative session on December 3, 2010, and agreed that an additional prehearing conference and scheduling session would be held on December 17, 2010 at 10 a.m. for the purpose of deciding a future procedural schedule for the remainder of this case.

4. A ruling from the Subcommittee on the above-referenced jurisdictional/scope issue is a necessary prerequisite for determining an appropriate schedule for the duration of this proceeding. For example, if the Applicant's position prevails, it will not be necessary for the Applicant to file any additional information about the interconnection line or facilities, and the docket could likely conclude relatively soon. However, if the Subcommittee determines that the interconnection line and/or the interconnection facilities are subject to the SEC's jurisdiction and therefore must be certificated, and further expands the scope of its review, the Applicant may need additional time to supplement its filings to include more information about the effects of the line and/or facilities; Public Counsel and the Intervenors will also likely request additional time for their consideration of that additional information.

5. Because the parties are meeting on December 17, 2010 to discuss an appropriate procedural schedule for the duration of this docket, a ruling by that date on the jurisdictional/scope issue referenced above would greatly assist them in that endeavor.

6. The undersigned has contacted the parties via electronic mail in a good faith effort to obtain their position on the within Motion. As of the time of this filing, the following parties have responded: the Buttolph/Spring/Lewis intervenor group objects; Counsel for the Public takes no position on this Motion.

WHEREFORE, Groton Wind, LLC respectfully requests that this Committee:

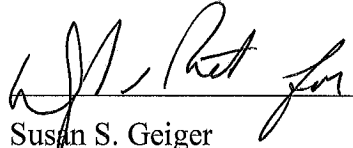
A. Issue a ruling on the above-described jurisdictional/scope issue prior to the prehearing conference/scheduling session scheduled for December 17, 2010; and

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

Groton Wind, LLC
By Its Attorneys

Dated: December 8, 2010



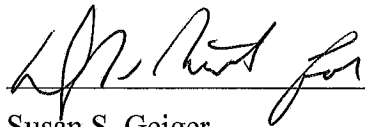
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Certificate of Service

I hereby certify that, on the date written below, I caused the foregoing Motion to be sent by electronic mail and/or hand delivery to the persons on the service list (exclusive of Committee members).

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Date



Susan S. Geiger

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THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

Docket No. 2010-01

APPLICATION OF GROTON WIND, LLC
FOR A CERTIFICATE OF SITE AND FACILITY

APPLICANT'S PROCEDURAL PROPOSAL FOR
THE REMAINDER OF THE PROCEEDING

I. Additional Filings on Overhead Line

The October 12, 2010 supplement to the Groton Wind Application contained information about an alternative proposed overhead power line that would deliver power from the Project to the New Hampshire Electric Co-Operative's ("NHEC") facilities on Route 25. This "alternative link" was proposed due to concerns raised by NHEC about the status of pole and anchor easements along Groton Hollow Road, and to respond to concerns raised by residents of Groton Hollow Road. In response to requests from the Committee, the Applicant submitted Exhibits 44 and 45, which discuss the wetlands impacts of this link, as well as an indication that the New Hampshire Natural Heritage Bureau's data base shows no threatened or endangered species in this area. In addition, witnesses for the Applicant testified at the hearings that the "alternative link" would not unreasonably adversely affect the natural environment, aesthetics, wetlands or historic sites. In order to supplement the record and to give the parties and the Committee more information about the "alternative link," the Applicant is filing herewith additional information to enable the Committee to make the requisite findings about this relatively minor modification to the Project.

The Applicant believes that the alternative link to Route 25 is a minor change in the Project's plans that could be reviewed and approved outside of the SEC process by the New Hampshire Department of Environmental Services ("DES") through the power that is normally delegated to DES by the Committee pursuant to RSA 162-H:4, III in a final order on the Application (and in accordance with the proposed DES conditions)¹. Nonetheless, the Applicant has provided additional information about the alternative line in this proceeding and will make witnesses having information about it available for a technical session, cross examination and questions from the Committee at this time.

II. Additional Discovery and Hearings

The Applicant believes the SEC should adopt a process that affords the parties an opportunity for discovery and allows the Committee an opportunity to elicit the information it requires of the Applicant's witnesses about the "alternative link", and further believes that this can reasonably be accomplished within the statutory timeframe of this proceeding. Toward that end, the Applicant suggests that the parties participate in an additional technical session and that the SEC hold one more day of hearings. The Applicant respectfully requests that the Committee forthwith issue an order that schedules a technical session one week after the date of said order, and that also schedules another day of hearings to be held approximately two weeks after the date of said order. During the technical session the Applicant will make available its witnesses with relevant information pertaining to the 34.5 kV line between the Project and Route 25. At the hearing, the Applicant's witnesses who have submitted additional testimony with this Procedural Proposal will be present to answer questions on the "alternative link" between the Project and Route 25. In addition, Mr. Cherian will be available to respond to issues that have

¹ See Wetlands Bureau Final Decision, October 8, 2010, Project Specific Condition 2 ("[p]rior to construction, any plan revisions or changes in construction details or sequences shall be submitted to DES for review and approval.")

been previously deferred to him. We believe this procedure will protect the parties' due process interests in that the parties will have a full opportunity to review the information submitted and to conduct discovery through the technical session on the limited issues that remain, as well as the right to conduct cross examination for a full and true disclosure of the facts as required by RSA 541-A:33, IV. The Committee will also have an opportunity to review the information submitted and ask questions about the "alternative link."

III. Other Issues

A. Alternative Interconnection Route to the Beebe River Substation Area

Notwithstanding the Applicant's belief that the alternative link to Route 25 is a minor change in the Project's plans which could be reviewed and approved by DES outside of the SEC process, the Applicant understands that the alternative link may be considered to be part of the Project site and therefore must be certificated by the Committee, even though the poles may be owned by the NHEC, and may also be used to provide station service to the Project's O&M Building. Accordingly, the Applicant has provided the necessary information about that line to the parties and the Committee and has proposed further proceedings to enable a full exploration of the issues relating to that line. However, insofar as the remainder of the overhead power line which will interconnect the Project to the transmission grid is concerned, more specifically from the point of interconnection at Route 25 to the Beebe River Substation area (which was described in Section F.4 of the original application), the Applicant submits, based on jurisdiction and precedent, that the Committee's review is limited to the issue of this line's impact on the orderly development of the region.

At the public hearing held in Plymouth on June 28, 2010, Mr. Cherian indicated that NHEC "had identified five or six different routes to get from the project site to the substation,

and that is ongoing.” Tr. (6/28/10) p. 23. Mr. Cherian also stated that those routes were under evaluation. *Id.* In the past, uncertainty about the precise locations of interconnection facilities has not prevented the Committee from moving forward with consideration of a wind energy project application. For example, only weeks before issuing an Order in the Lempster Wind case, the SEC reviewed alternative line routes that were proposed by the Town of Goshen. In that case, the SEC noted in its order on the Town of Goshen’s Motion to Intervene: “it is important to note that the Committee is not considering an application to construct or upgrade a distribution line in this docket. The Committee is considering an application to construct a wind powered electric generation facility. This distribution line is not owned by the Applicant and is not situated in the footprint of the project set forth in the application.”² The Committee correctly noted in the Lempster case that it was not certificating the interconnection line; it was only determining the distribution line’s impact on the orderly development of the region. Here, as in Lempster, the Applicant is not seeking a certificate for the interconnection line that will be situated on the NHEC’s poles along Route 25 or for other facilities that will enable interconnection with the transmission grid.

The Applicant has complied with SEC rules and provided information about this line and is happy to answer questions about it, as Mr. Cherian did at the hearing on November 1, 2010. He would also be available for additional questioning if the Committee requests. However, because that line and any other interconnection facilities such as the step-up transformer are not being certificated here, precise details about those facilities need not be evaluated as part of this Application and therefore no additional process is necessary for the consideration of those details. The Applicant respectfully urges the SEC to apply the same standard in the Groton case

² *Re: Community Energy Inc. and Lempster Wind, LLC. Application for Certificate of Site and Facility for the Lempster Mountain Wind Power Project, Docket No. 2006-001, Order on Motion of the Town of Goshen to Intervene and Motion of Public Service Company of New Hampshire to Intervene (Feb. 8, 2007), p. 3.*

that it did in the Lempster case, and consider only the interconnection line's impact on the orderly development of the region. In that regard, the Applicant submits that by staying within an existing utility corridor and by interconnecting with the grid at or near other interconnection or transmission facilities, its plans are fully consistent with the orderly development of the region.

The Applicant believes it is important for the Committee to understand that the Project's initial proposed interconnection plan was changed due to requirements by Public Service Company of New Hampshire ("PSNH"). The interconnection route change was also developed in response to concerns about the initial interconnection proposal raised during the SEC process by residents of Quincy Road in Rumney and by NHEC. The alternative route is not substantially different than the originally proposed route; much of it is nearly identical to the route proposed in the original Application as it is an overbuild on NHEC poles in existing rights-of-way. Thus, because the interconnection route has not changed significantly, and is outside of the scope of this proceeding (except for the issue of its affect on the orderly development of the region), there is no need for additional process to consider it.

NHEC will review and ultimately approve the interconnection route within its distribution system and will obtain any necessary pole licenses from the Commissioner of the New Hampshire Department of Transportation who has exclusive jurisdiction to issue same. *See* RSA 231:161, I (c). The Project's final interconnection plan will be governed by the outcome of studies conducted by ISO-New England and PSNH. Thus, because entities other than the Applicant will finally determine the interconnection route and plan, it is not possible at the present time to provide final details about them. This circumstance, however, does not preclude the Committee from moving ahead with consideration of the Application. In the recent SEC

docket involving Granite Reliable Power's application for a certificate for a 99MW wind project in Coos County, the Committee found that certification of the facility should not be delayed for completion of interconnection and substation plans. There the Committee denied the request of an intervenor, Industrial Wind Action Group, to require the Applicant to submit the final System Impact Study ("SIS") along with any interconnection and substation plans prior to any construction activities, finding that the SIS and results were not within the mandate of the subcommittee. In the Granite case the Committee determined that it had no authority or control over the ISO and therefore it would not be appropriate for the decision or certificate to require the action suggested by IWAG. *See Application of Granite Reliable Power*, Docket No. 2008-04, Order Denying Motions for Rehearing, (Nov. 9, 2009).³ For the reasons articulated in that order, the Committee should reach the same result here. In addition, because the ISO-NE study period exceeds the Application period established by RSA 162-H:6-a, the Committee should, as it has done in past cases, exercise its authority to condition a certificate on the Applicant's satisfaction of other regulatory requirements. *See* RSAs 162-H:16, VI and VII.

B. Historic Resources Issue

It should be noted that in its October 28, 2010 memo to Attorney Iacopino, the New Hampshire Division of Historical Resources ("DHR") requested the assistance of the US Army Corps of Engineers ("USACE") "to discuss an appropriate resolution of the outstanding survey needs for this project." In an electronic mail message to Attorney Iacopino on November 5, 2010, the USACE said that it believed "that with additional efforts on behalf of the applicant the PAF and permitting process can move on to a successful resolution." This sentiment was also

³ "The Subcommittee finds that the System Impact Study (SIS) and results are not within the mandate of the Subcommittee. The Subcommittee has no authority or control over the Independent System Operator (ISO) and, therefore, it would not be appropriate for the Decision or Certificate to require the action suggested by IWAG. If the ISO finds that upgrades need to be made to the Coos County loop in order to accommodate the Project, the Applicant will have to comply with that direction in order to provide power to the system." Order, p.6.

echoed by Dr. Luhman in her testimony at the hearing in which she indicated that, in her professional opinion, the Project would not have an unreasonable adverse impact on historic sites and that the on-going consultative process with the Army Corps of Engineers and DHR would fully address any issues. The Applicant will reach a successful resolution with the DHR and the USACE, but it will take some time, as it has in other dockets. For example, in the Granite Reliable Power case, the SEC issued a certificate but delegated to DHR the authority “to determine the need for appropriate evaluative studies, determinations of National Register eligibility and mitigative measures (redesign, resource protection, or data recovery) as required by state or federal law and regulations.” *Application of Granite Reliable Power*, Docket No. 2008-04, Order and Certificate of Site and Facility (July 15, 2009), p. 4. In the Lempster Wind case, the SEC recognized that “the discovery and identification of historic sites and cultural resources can be a fluid process.” *Application of Lempster Wind, LLC*, Decision Issuing Certificate of Site and Facility with Conditions (June 28, 2007), p. 29. The SEC therefore conditioned the certificate with a requirement that the applicant: “1) continue its consultations with the DHR and comply with all agreements and memos of understanding with that agency; 2) complete its Phase 1-a archaeological survey and provide copies to DHR and the Committee; and 3) undertake a Phase 1-b archaeological survey in all archaeologically sensitive areas and file the results of the survey with DHR and the Committee.” *Id.* In the instant case, Groton Wind has already completed the Phase 1-A and Phase 1-B surveys, so this Project is much further along in the DHR process than Lempster Wind was when it received its certificate. Thus, as was the case in the GRP and Lempster dockets, the instant proceedings should not be delayed simply because the Project’s consultations with DHR have not yet concluded.

The fact that DHR's study period extends beyond the SEC process period should not delay completion of this proceeding. In fact, this situation is expressly contemplated by RSA 162-H: 16, VII which grants the SEC authority to condition a certificate on the results of studies required by a state or federal agency whose study periods exceed the application period. Because the Army Corps permitting process (in which DHR plays a consultative role) exceeds the application period in this case, the SEC should, as it did in two other wind project cases, condition any certificate of site and facility on the Applicant's completion of its studies to the satisfaction of the Army Corps and DHR. The Applicant expects to sign a Memorandum of Agreement with the Army Corps and DHR on this issue.

In addition to the foregoing, the Applicant wishes to point out certain legal issues that the Committee should consider in connection with the issue presented by DHR's recent correspondence about this Project. First, the Division of Historical Resources is not a state agency that has jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility. Second, DHR's letter of October 28, 2010 to the Army Corps of Engineers states that the Applicant's Project Area Form ("PAF") did not currently meet NH DHR "guidelines." As the Committee is aware, in New Hampshire, guidelines do not have the force and effect of law unless they are promulgated under RSA 541-A. *In Re City of Manchester*, 149 NH 283 (2003). The rulemaking process is important because it informs regulated parties as to which agency directives are rules of prospective, rather than ad hoc application, and what they must do to comply with them. *Appeal of Marmac*, 130 NH 53 (1987). Here, DHR has determined that one of the Applicant's numerous submissions does not currently comport with its non-binding guidelines. As Dr. Luhman testified, she submitted the same type of information to DHR in this case as she did in the GRP case, however, she obtained a different

response from DHR there than the one the agency provided in this Groton proceeding. The Applicant is continuing to consult with the Army Corps and DHR and will provide the particular submission referenced in the DHR letter in a format and content acceptable to both agencies.

In these circumstances, DHR's October 28th letter should not bar the Committee from moving ahead and considering the record evidence provided by Dr. Luhman, which indicates that in her professional opinion, the Project will not have an unreasonable adverse effect on historic sites.

C. Fish and Game Letter

The Applicant has consulted with the New Hampshire Department of Fish and Game ("Fish and Game") throughout the permitting of the Project. The Applicant has discussed the letter that was submitted to the Committee on the last day of hearings with Fish and Game and they are working together to create appropriate post construction studies that meet the intent of the comments made in the letter. As noted in the letter "the Department found that the Avian studies satisfactorily complied with the survey recommendations to adequately survey preconstruction bird activity at the proposed project."

D. Decommissioning

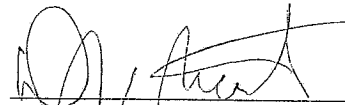
The Applicant has reached an agreement in principle with the Town of Groton on the issue of decommissioning. In the absence of a signed agreement with the Town of Groton, the Application is willing to accept as a condition of the certificate a requirement to finalize an agreement with the Town of Groton, including decommissioning requirements and financial assurances that are acceptable to the Town of Groton. The Applicant will file the signed agreement once it has been executed by both parties. The Applicant notes that the final signed Agreement between Lempster Wind and the Town of Lempster, regarding decommissioning and other issues, was not completed until after the Committee rendered its decision in that docket.

IV. Conclusion

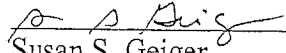
For all of the reasons set forth above, the Applicant respectfully submits that this docket should move ahead as proposed in section II, above, and that no additional delay in the procedural schedule is appropriate or necessary to consider the other issues discussed herein. To delay the proceeding until all of the ISO-NE and DHR issues are completely resolved would be contrary to long-standing precedent of this Committee, contrary to the deadlines established by RSA 162-H:6-a and inconsistent with the procedural mechanism established by RSA 162-H:16, VII which authorizes the Committee to condition certificates upon the results of required federal and state agency studies whose study periods exceed the SEC application period. Moreover, undue delay in the procedural schedule of this docket could unnecessarily jeopardize this important renewable energy project. A lengthy delay such as that suggested by Counsel for the Public would likely affect the Project's ability to prepare bid documents (which cannot be done until final permits have been issued), secure building contracts, and construct the Project by the end of 2012. This would create serious financial harm for the Project, the economics of which depend upon meeting that deadline.

Respectfully submitted,

Groton Wind, LLC
By Its Attorneys



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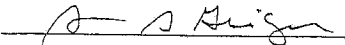

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Dated: November 19, 2010

Certificate of Service

I hereby certify that, on the date written below, I caused the foregoing pleading to be sent by electronic mail or U.S. mail, postage prepaid, to the persons on the service list (exclusive of Committee members).

Date: November 19, 2010


Susan S. Geiger

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