

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2010-01**

**Application of Groton Wind, LLC for a Certificate of Site and Facility  
for a Renewable Energy Facility in Groton, New Hampshire**

**Order on Pending Motions and Further Procedural Order**

**Issued December 14, 2010**

**Introduction**

On March 26, 2010, Groton Wind, LLC (Applicant) filed an Application for a Certificate of Site and Facility. The Applicant petitions the Site Evaluation Committee (Committee) for authority to site, construct and operate a renewable energy facility (Facility) in the Town of Groton, Grafton County. The Application proposes a wind energy facility consisting of 24 wind turbines, each having a nameplate capacity of two (2) MW for a total nameplate capacity of 48 MW. On April 26, 2010, the Vice-Chairman of the Committee accepted the Application as provided in RSA 162-H: 6-a, III. On May 7, 2010, the Chairman of the Committee designated a Subcommittee to review the Application as provided in RSA 162-H: 4, V.

An adjudicatory hearing in this docket commenced on November 1, 2010, and continued through November 5, 2010, at which time, consistent with the Order and Notice of Final Prehearing Conference and Public Adjudicative Proceedings, dated October 12, 2010, the proceeding was recessed to the call of the Chair.

In response to a request from the Chair, the Applicant, Counsel for the Public and some of the intervenors filed memoranda addressing the procedural schedule that should be followed in this docket. The Subcommittee has also received additional supplemental testimony and three motions.

The Applicant, in response to data requests from the Committee at the adjudicatory proceedings filed Exhibit 33, the capacity factor profile and Exhibit 40 B, financial statements of the non-publicly held companies, Groton Wind LLC and Iberdrola Renewable Holdings Inc. The Applicant filed a Motion for Protective Order and Confidential Treatment for these two exhibits.

Additionally, the Buttolph/Lewis/Spring intervenor group filed a motion seeking reimbursement for its expenses in producing a witness, Michael McCann.

On December 3, 2010, the Sub-Committee held a public meeting for the purpose of discussion and deliberated on the procedural schedule for the balance of this proceeding. The Subcommittee also considered and deliberated on the outstanding

motions. This Order memorializes the actions taken by the Subcommittee. This Order also addresses the Applicant's recent motion relative to jurisdiction over associated facilities and the procedural schedule.

### **Motion for Protective Order and Confidential Treatment**

The Applicant has filed a motion seeking confidential treatment of Exhibit 30, financial statements of the Applicant and another privately held company that are both subsidiaries of Iberdrola Renewables, Inc, a publicly traded company. The Applicant also seeks confidential treatment and non-disclosure of its capacity factor profile.

In *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), the New Hampshire Supreme Court described a three-step analysis to determine whether information is exempt from public disclosure pursuant to the Right-to-Know law, RSA 91-A: 5, IV. The first prong of the analysis is to determine if the Applicant has identified a privacy interest. If a privacy interest is invoked then the agency must assess whether there is a public interest in disclosure. Disclosure should inform the public of the activities and conduct of the government. If disclosure does not serve that purpose then disclosure is not required. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non disclosure. *See also, Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 NH 540, 553 (1997). (The agency must perform a balancing test to determine whether the records should be protected or if the public's interest in disclosure is outweighed by the Applicant's interests in protecting its confidential financial and commercial information.)

The Applicant seeks confidential treatment for the financial statements of non-publicly held companies. At the same time, the Applicant has filed and disclosed the financial statements of its parent company which is publicly traded. The information is clearly financial information as contemplated by RSA 91-A: 5, IV. Disclosure of the financial statements will do little to inform the public of the conduct or activities of the government, especially since the parent company's financial records have been disclosed. Under these circumstances the Applicant's interest in maintaining the confidentiality of the financial record of its non-public subsidiaries outweigh the benefits of disclosure to the public. The financial statements may be filed confidentially and need not be disclosed to the public or other parties. However, because of his important statutory role, pursuant to RSA 162-H:9, copies of the financial statements shall be provided to Counsel for the Public. Counsel for the Public shall not further disclose the information without prior approval of the Committee.

The Applicant also seeks confidential treatment of its capacity factor profile. The capacity factor profile includes technical information including the results of various wind study surveys performed by the Applicant. This information is researched and generated at great expense to the Applicant and is in the nature of a trade secret. Disclosure of the information would disadvantage the Applicant by allowing competitors to obtain, at no cost, the Applicant's trade secrets. There is little if any public interest in the disclosure of this type of information and the threat of financial harm to the Applicant

is great. Therefore, the capacity factor profile information may be filed confidentially and shall not be disclosed to the public. However, Counsel for the Public shall be provided with a copy of the information and shall not further disclose the information without further order from the Committee.

### **Motion for Reimbursement of Fees for Expert Witness**

The Buttolph/Lewis/Spring intervenors seek reimbursement from the Applicant for the expense incurred in obtaining the testimony of Michael McCann. Mr. McCann testified generally about his opinions regarding the effect of wind turbine projects on nearby property values. The Intervenor alleges that Mr. McCann is the only witness to credibly address the issue of property values as a component of the orderly development of the region. The Intervenor relies on RSA 162-H: 10, V. The Applicant objected to the motion asserting that such relief was beyond the authority of the Subcommittee as Mr. McCann was retained by an intervenor and not by the Committee or Counsel for the Public. At the public meeting, Counsel for the Public questioned the intervenors' reliance on RSA 162-H:10, V, but suggested that reimbursement might be statutorily available as a condition of the Certificate at the conclusion of the docket. At the public meeting, the Applicant objected to Counsel for the Public's suggestion.

RSA 162-H:10, V, states:

The site evaluation committee and counsel for the public shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee. The site evaluation committee and counsel for the public are further authorized to assess the applicant for all travel and related expenses associated with the processing of an application under this chapter.

The statute clearly does not authorize the Subcommittee to order reimbursement for a witness retained by a party other than Counsel for the Public. Neither the Subcommittee nor Counsel for the Public found it necessary or appropriate to employ the Intervenor's consultant. The Intervenor alone made the decision to employ the consultant. Therefore, the Subcommittee denied the Intervenor's motion for an order directing the Applicant to bear the costs of the expert consultant.

### **Procedural Schedule**

At the public meeting on December 3, 2010, the Subcommittee also considered and deliberated on a further procedural schedule. Shortly before the commencement of the adjudicatory hearings the Subcommittee was advised that the Applicant was considering an alternative route for the transmission line that would deliver power from

the project area in Groton to the Beebe River Substation. The Subcommittee also was advised that, contrary to the original Application, the interconnection with the substation will be required to be at 115 kV. This will necessitate the construction of a step-up transformer station that was not contemplated in the original Application. Additionally, the Subcommittee was informed that the New Hampshire Division of Historical Resources had rejected the project area form submitted by the Applicant as part of its federal Section 106 review. These developments affect the statutory concerns of the Subcommittee and it will be necessary to extend the adjudicatory hearings and obtain additional information. It is in the public interest to ensure that these matters are appropriately addressed in the course of the proceedings in the docket. Therefore, the Subcommittee unanimously found it to be in the public interest to extend deliberations in this docket until April 26, 2011.

In order to ensure that appropriate discovery and technical sessions are completed before further adjudicatory proceedings, a pre-hearing conference shall be held on December 17, 2010 at 10 a.m. Counsel for the Committee shall preside at the pre-hearing conference. The parties will discuss a discovery schedule, the need for additional technical sessions and possible dates to conclude the adjudicatory portions of this proceeding. Counsel for the Committee shall issue a notice to the parties advising of the time and place for the pre-hearing conference. That notice shall be displayed in the office of the Department of Environmental Services and at the offices of the Public Utilities Commission. In addition, the notice shall be published on the Committee's website and served upon the service list in this docket.

On December 8, 2010, the Applicant filed its Unassented-to Motion for Ruling on Jurisdiction/Scope by December 17, 2010. The Applicant reprises the question of the Committee's 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." Among other things, the Applicant asserts that a ruling on the jurisdictional issue is a "necessary prerequisite for determining an appropriate schedule for the duration of this proceeding." The Applicant reports that the Buttolph/Spring/Lewis group objects to the motion and that Counsel for the Public takes no position.

Resolution of the jurisdictional issue posed by the Applicant is not a necessary prerequisite for determining an appropriate procedural schedule. Arguably, resolution of the jurisdictional issue relating to what constitutes "associated facilities" could simplify the undertaking, if that were the only unresolved issue. However, there are other unresolved issues, notably concerning historic sites, which must be contemplated in determining an appropriate schedule. While it might be preferable to set a schedule that moved along a single path of procedural deadlines, the conditions that confront us are more complex and may require moving along more than one path to ensure a full and timely review. In any event, there is insufficient time to rule on the jurisdictional issue prior to the December 17, 2010 technical session. The Applicant's motion is denied.

## Conclusion and Order

**Based upon the foregoing, it is hereby:**

**ORDERED**, that the Applicant's Motion for Protective Order and Confidential treatment is GRANTED; and it is

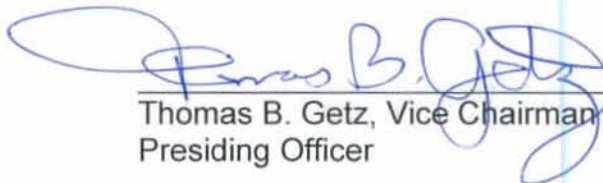
**FURTHER ORDERED**, that the Motion of Intervenor Group Buttolph/Lewis/Spring for Order Directing Groton Wind LLC and Iberdrola Renovables to Bear the Costs of Expert Consultant is DENIED; and it is,

**FURTHER ORDERED**, that the Applicant's Unassented-to Motion for Ruling on Jurisdiction/ Scope by December 17, 2010 is DENIED; and it is

**FURTHER ORDERED**, that it is in the public interest to extend deliberations in this docket until April 26, 2011; and it is

**FURTHER ORDERED**, that a pre-hearing conference shall be held on December 17, 2010, at a time and place to be determined by Counsel for the Committee. The parties shall discuss a further procedural schedule, appropriate discovery and scheduling for the balance of this docket.

December 14, 2010

  
Thomas B. Getz, Vice Chairman  
Presiding Officer