

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

**APPLICATION OF GROTON WIND, LLC
NO. 2010-01**

BRIEF OF THE TOWN OF PLYMOUTH, NEW HAMPSHIRE

NOW COMES the Town of Plymouth, New Hampshire (the “Town”), Party-Intervenor, by and through its attorneys, Donahue, Tucker & Ciandella, PLLC, and submits the following Brief to the New Hampshire Site Evaluation Committee (the “Committee”) for its consideration in ruling on the application of Groton Wind, LLC (the “Applicant”) for a Certificate of Site and Facility (the “Certificate”) for a 48 Megawatt Wind Turbine Facility (the “Project”) in the Town of Groton, Grafton County, New Hampshire, stating as follows:

INTRODUCTION

The Committee should condition any Certificate for the Project on the Applicant providing the Town with the emergency response equipment and resources requested by the Town. The Applicant’s unreasonable refusal contradicts the statutory mandate of RSA 162-H:16, IV(c) that the Project shall not have an unreasonable adverse effect on public health and safety. If the Applicant cannot honor the Town’s bona fide, reasonable request, then the Project should be denied.

The evidence of record overwhelmingly supports the Town’s request for two (2) Type 6 brush trucks, two (2) six-person ATVs, three (3) forestry high pressure portable pumps and related training. The Town has been consistent and specific in its request and the rationale for that request from the start. The Applicant, despite its apparent willingness to honor the requests of other impacted municipalities, has unreasonably cast aside the Town’s overtures to help in creating an emergency response system and infrastructure that would minimize the fire dangers

posed by the Project to nearby human populations and the surrounding pristine natural environment.

As the Town and its residents brace themselves for the Project's undeniable negative impact on local property values and overall quality of life matters, whether it be through the noise impact on the Tenney Mountain side of the Project or the visual impact on Town hallmark's such as Loon Lake and the Eagle's Nest residences, they struggle to understand why, if nothing else, the Applicant cannot honor their request for emergency response equipment and resources.

I. THE TOWN PRESENTS EXPERT TESTIMONY, NOT SUFFICIENTLY REBUTTED BY THE APPLICANT OR OTHER INTERVENING PARTIES, DEMONSTRATING THE POTENTIAL FOR THE PROJECT TO OVERWHELM THE CURRENT EMERGENCY RESPONSE SYSTEM AND INFRASTRUCTURE.

The Town's Fire Chief, Casino Clogston, submitted to the Committee Pre-Filed Direct Testimony (August 30, 2010), Answers To The Intervenors' Data Requests (September 22, 2010) and Answers To The Applicant's Data Requests (September 22, 2010). Chief Clogston testified in person before the Committee on November 4, 2010 (See Pages 97-167, Transcript of "Day 4 – Morning Session"). In total, the evidence of record reflects the following key facts:

- Chief Clogston manages the largest, full-time fire department in the Project area;
- Even when not acting as a first responder to an area emergency, his fire department very often acts as the primary responder due to the organization and resources offered by his fire department and its membership in the area's mutual aid emergency response society;
- Chief Clogston was qualified and recognized by the Committee as an expert in firefighting and emergency response;

- Chief Clogston is familiar with the Project, as proposed, and has a long-standing, first-hand, intimate knowledge of the landscape and geography of the Project site and the general vicinity, as well as the emergency response issues that are thus unique to those areas;
- The possibility of a fire or other emergency at the Project site, regardless of how severe or catastrophic, is a distinct and undeniable possibility;
- There is a high probability that the current emergency response system and infrastructure would not be able to adequately contain and minimize the risks to nearby human and natural environments presented by such an emergency;
- Chief Clogston requested that the Applicant provide his fire department with two (2) Type 6 brush trucks, two (2) six-person ATVs, and three (3) forestry high pressure portable pumps (and initial training related to that equipment and its proper use, as well as proper fire suppression techniques for wind turbines), to be shared with the Town of Rumney Fire Department; and
- Chief Clogston explained how the equipment would allow his fire department, as the most likely primary responder to a Project emergency, to adequately contain and minimize the risks to nearby human and natural environments presented by such an emergency.

II. THE APPLICANT’S REFUSAL TO HONOR THE TOWN’S REQUEST IS UNREASONABLE, ARBITRARY AND CONTRARY TO THE EVIDENCE OF RECORD.

The Applicant entered into detailed and comprehensive written agreements with the Town of Rumney and the Town of Groton, but not the Town of Plymouth, despite Chief Clogston’s stated desire for assistance from the Applicant in managing the fire and fire-related

risks posed by the Project and despite the Town's role in the proceedings as a Party-Intervenor. In fact, the Applicant went so far as to exclude the Town, namely Chief Clogston, from participating at the Lempster Wind work session pertaining to emergency response issues associated with such commercial scale wind projects. The Applicant justified this slight on the grounds that "we take our cues from the Rumney Chief" and because "they are the first responders." Such a statement demonstrates that the Applicant, at best, does not have a realistic and practical understanding of the emergency response system and infrastructure for the Project area and, at worst, does not take seriously the fire and fire-related risks associated with the Project and the dangers posed to the people and ecology in the vicinity.

Notwithstanding the Project's general exemption from the statutory local land use scheme, the Committee would be within its authority if it considered the analysis that a local planning board would apply regarding the premature and scattered subdivision of land. The subdivision regulations which a planning board adopts may (emphasis added):

[p]rovide against such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

See RSA 674:36, II(a); see also Garipay v. Hanover, 116 N.H. 34 (1976).

In the alternative, the Committee should consider the analysis that a local planning board would apply in the site plan review process. The site plan review regulations which a planning board adopts may (emphasis added):

[p]rovide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of:

(4) Inadequate provision for fire safety, prevention, and control.

See RSA 674:44, II.

The Applicant offered no expert testimony sufficient to rebut Chief Clogston's testimony concerning the equipment and resources necessary to access, contain and defeat a fire or fire-related emergency at the Project site. In fact, the Applicant seems to rely primarily on (i) statements (not subject to cross-examination) from non-experts in the Town of Groton and Town of Rumney that those municipalities do not feel the requested resources are necessary and (ii) its second guessing of Chief Clogston's expert description of how he would respond to an emergency at the Project site – neither of which have the weight and veracity as the direct expert testimony of Chief Clogston himself.

Chief Clogston also offered that it would cost the Applicant approximately \$150,000 to comply with the Town's request. This price tag is dwarfed by the estimated \$120 Million cost of the Project overall. Thus, it is puzzling to the people of Plymouth why the Applicant cannot, on balance, honor Chief Clogston's simple request – especially since they are the ones who must see, hear and live with the Project well into the future.

The unreasonableness of the Applicant's position is underscored when viewed in light of the impacts that the Applicant is asking the Town and its residents to bear. These impacts on the Town include, but are not limited to, the following:

- Noise impact on the Tenney Mountain side of the Project;
- Visual impact on Loon Lake (See Public Counsel Exhibit 13); and

- Visual impact on the Eagle's Nest residences.

These impacts will inevitably devalue local properties and, as a practical matter, make it even more difficult for the Town to raise the capital necessary to adequately equip and prepare itself for the fire and fire-related dangers presented by the Project. By way of its Brief, the Town expresses its support of the property value impact arguments raised by the Buttolph/Lewis/Spring Intervenor Group and the testimony offered by that group's expert, Mr. Michael McCann.

CONCLUSION

The Applicant has failed to provide a satisfactory response to the Town's public safety requests for emergency preparedness resources. If the Applicant refuses to aid the Town in adequately managing the risks presented by the Project, then the Project will have an unreasonable adverse effect on public health and safety. As such, the Applicant, at this point in time, is not an appropriate candidate to receive a Certificate from the Committee.

A decision by the Committee to order the Applicant to comply with the Town's request will not lend itself to windfalls for communities or groups on similar future projects. The Town's request is bona fide. It is informed, well-reasoned and based on expert opinion. The Committee has the authority to condition the Certificate on the Applicant's compliance with the Town's request. In the alternative, the Committee may order the Applicant to negotiate with the Town, in good faith, on the emergency preparedness issues and enter into an appropriate agreement. If no such order or is made or if no such agreement is reached, then the only way for these risks to be adequately managed by the Town is for the Project to be denied.

Respectfully Submitted,

TOWN OF PLYMOUTH, NEW HAMPSHIRE

By And Through Its Attorneys,

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Certificate of Service

I hereby certify that the foregoing Brief Of The Town Of Plymouth, New Hampshire has this 1st day of April 2011 been served upon all parties/interested parties and committee staff on the Service List via electronic mail.

s/ John L. McGowan

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