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June 15, 2011

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 three copies of the Applicant's Objection to Buttoph/Lewis/Spring Intervenor Group Motion for Rehearing.

Please contact me if there are any questions about this filing. Thank you for your assistance and cooperation.

Very truly yours,

S. S. Geiger

Susan S. Geiger

cc: Service List (electronic mail only)
Enclosure
770871_1.DOC

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

APPLICANT'S OBJECTION TO BUTTOLPH/LEWIS/SPRING INTERVENOR GROUP MOTION FOR REHEARING

NOW COMES Groton Wind, LLC ("Groton Wind" or "the Applicant") by and through its undersigned attorneys and respectfully objects to the Motion for Rehearing filed by the Buttolph/Lewis/Spring Intervenor Group ("the Intervenors' Motion"). In support of this objection, Groton Wind states as follows:

The Intervenors' Motion Fails to Comply with Applicable Rules[1] and Statutes

1. While the matters set forth in the paragraphs numbered 1, 2, 4 and 6 of the Intervenors' Motion discuss and complain of certain portions of the Subcommittee's deliberations, the Intervenors fail to specify or even reference any provisions of either the Decision or Order issued May 6, 2011 that they claim are unlawful or unreasonable as required by RSA 541:4. That statute provides that motions for rehearing must "set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." Thus, because in paragraphs 1, 2, 4 and 6 of their Motion the Intervenors' simply complain about deliberations statements instead of specifying the provisions in either the Decision or Order that are alleged to be unlawful or unreasonable,

[1] The Intervenors did not make a good faith effort to obtain concurrence with the relief sought in their Motion as required by N.H. Code Admin. Rule Site 202.14 (d). They also failed to comply with the provisions of Site 202.14 (e).

they have failed to meet a fundamental prerequisite for obtaining relief in the form of a rehearing on those issues

2. Paragraph number 3 of the Intervenors' Motion asserts that the Subcommittee erred in its decision to allow the Applicant to respond to the Intervenors' and Public Counsel's proposed conditions. The Intervenors' request for rehearing on this ground must be denied as it is untimely. *See* RSA 541:3 ("[w]ithin 30 days after any order **or decision** has been made...any party...may apply for a rehearing.") (Emphasis added.) The Subcommittee's decision to allow the Applicant to respond to the proposed conditions submitted by the Intervenors and Counsel for the Public was made on March 22, 2011 at the conclusion of the adjudicative phase of the proceedings. Tr. Day 6, Afternoon Session – March 22, 2011, p. 103. ("Chairman Getz: ...I think it would be helpful for the Committee to know which proposed conditions the Applicant objected to and which ones it didn't. That would be very helpful...any maybe some explanation why.") None of the Intervenors objected to the Subcommittee's decision at that time. Nor did any of them file a Motion for Rehearing within 30 days of that decision as is required by RSA 541:3. Accordingly, the Intervenors' request for rehearing of the Subcommittee's decision to allow the Applicant to respond to proposed conditions must be denied.

Standard for Rehearing

3. Even if the Intervenors had met the deadline contained in RSA 541:3 for challenging the Subcommittee's decision to allow the Applicant an opportunity to respond to proposed conditions, the Intervenors are not entitled to rehearing on any of the matters asserted in paragraph 3 of their Motion, or any other matters contained in their

Motion. Motions for rehearing must specify every ground upon which it is claimed that a decision or order is unlawful or unreasonable. RSA 541:4. The Committee may grant a rehearing if, in its opinion, "good reason for rehearing is stated in the motion." RSA 541:3. The purpose of rehearing is to review matters alleged "to have been overlooked or mistakenly conceived in the original decision..." *Dumais v. State,* 118 N.H. 309, 311 (1978). "A successful motion does not merely reassert prior arguments and request a different outcome." *Verizon New Hampshire Wire Center Investigation,* NH PUC Docket, 91 NH PUC 248, 252 (2006).

As explained below, the Intervenors have failed to demonstrate why any of the rulings on their proposed conditions are either unlawful or unreasonable or that the rulings overlook or misconstrue evidence. In addition, many of the reasons for rehearing presented in the Motion are just reassertions of arguments made previously by the Intervenors either at hearing or in their post-hearing brief. Accordingly, the Intervenors' Motion should be denied.

The Intervenors Are Not Entitled To Rehearing Of Any Rulings On Proposed Conditions

5. For the reasons discussed below, the Intervenors are not entitled to rehearing on any of the Subcommittee's rulings on the following proposed conditions:

A. **Buttolph Group Condition Request No. 1 (Property Value Guarantee).** In support of their request for rehearing on this issue, the Intervenors claim that the Subcommittee allowed the Applicant to present "new testimony." Motion, p. 6. That assertion is false; the Applicant's response to the proposed condition merely provided an explanation as to why the Applicant believed that the proposed condition was unacceptable. No new substantive testimony on the underlying issue (of the Project's

anticipated effects -or lack thereof- on property values) was submitted. Thus, contrary to the Intervenors' claims, there was no need to subject the Applicant to cross examination regarding its position/argument on this or any other proposed condition. Moreover, as discussed in paragraph 2 above, the Intervenors failed to seek rehearing within 30 days of the Subcommittee's March 22, 2011 decision allowing the Applicant to respond to proposed condition as required by RSA 541:3. Thus, this portion of the Motion is untimely and therefore should be denied.

B. **Buttolph Group Condition Request No. 12D (Emergency Plan for Groton Hollow Road approved by SEC prior commencement of construction).** In support of their request for rehearing on this issue, the Intervenors claim that: 1) the New Hampshire Department of Transportation ("NH DOT") oversized vehicle permits will not adequately protect Groton Hollow Road, as it is not a state road; 2) "numerous problems have occurred throughout the country" regarding turbine transportation; and 3) an "illegal fire" recently occurred within the "private" part of Groton Hollow Road. None of these arguments provide sufficient grounds for rehearing. First, the allegations are simply false: (1) NH DOT determines the precise routes and conditions for transport of oversized cargo, including routes over town roads. This occurred in Lempster, where New Hampshire State Police units escorted turbine component transport vehicles on both state and town roads; (2) The Intervenors purport to have identified a single example of a vehicle that was stuck or disabled in downtown Shelby, Ohio. This example, even if accurate, has no bearing on this docket. The Intervenors have provided no information regarding how the Ohio Department of Transportation's ability to regulate and manage oversized cargo compares with New Hampshire's Department of Transportation (which

successfully managed the Lempster turbine transport). More importantly, the example cited did not involve an Iberdrola Renewables project; and (3) The Intervenors allege "an illegal fire" and that their "information suggests that this structural fire was intentionally set in order to create space for a new building that would be necessary to facilitate the Groton Wind Farm Project." Motion, p. 7. The Intervenors also allege that the Applicant has initiated construction on the site. These statements amount to slanderous innuendo on the part of the Intervenors. The Applicant has no knowledge of any fire on the Project site, and has conducted no construction activities. The Applicant's activities on the site have been limited to standard pre-construction activities including land surveys, environmental and biological studies, geotechnical investigations, and installation of temporary meteorological towers (permitted by the Town of Groton). These activities do not constitute "commencement of construction" within the meaning of RSA 162-H:2, III. In fact, they are expressly authorized by that statute. Furthermore, the reasons presented by the Intervenors in support of their request for rehearing on this proposed condition are insufficient in light of the fact that the Applicant's Agreements with the Towns of Groton and Rumney, which the Subcommittee has reviewed in detail and made conditions to the Certificate, contain numerous conditions that will protect the public's health and safety. Thus, the additional condition that the Intervenors request is unnecessary.

C. **Buttolph Group Condition Request No. 12E (Payments to Groton Hollow Road residents to compensate for delays, inconveniences and loss of enjoyment of their homes during construction).** The Intervenors do not present any information to support a finding that the Subcommittee's failure to impose this condition is either

unlawful or unreasonable. Nor have they stated good cause for a rehearing of this proposed condition. Instead, they again attempt to seek financial gain for themselves and others, and simply argue that the Applicant "was untruthful in stating this condition was unjustified and unsupported by the evidence." Motion, p. 9. In support of their argument, they submitted a copy of a voluntary "Lempster Wind Farm Neighbor Agreement" which the Intervenors claim demonstrates that the Applicant recognizes the inconvenience the Project presents to its residential neighbors and that mitigation is needed. Motion, pp. 8-9. This argument does not constitute a valid basis for granting a rehearing. The Lempster Neighbor Agreement was in existence at the time of the hearings, and the Intervenors could have sought to introduce it as an exhibit. Because they have provided no explanation for why they did not do so, they should not be able to introduce it into the record at this time. Moreover, even if the Lempster Neighbor Agreement had been part of the record in this proceeding, it does not provide support for Buttolph Group Condition Request No. 12 E. The primary impetus for the Lempster Neighbor Agreement was not to compensate residents for delays, inconveniences or loss of enjoyment during construction. Instead, the Lempster Neighborhood Agreement was voluntarily offered by Lempster Wind, LLC to three (3) residents who were expected to experience sound levels above those authorized in the Site Evaluation Committee's Decision and Order in the Lempster Wind Docket. The Agreement between Lempster Wind, LLC and the Town of Lempster allowed for sound levels up to a maximum of 55 dBA[2], and the Lempster Project was designed accordingly. The Committee in the Lempster docket added conditions that effectively lowered the maximum sound levels at

[2] *See* Application of Lempster Wind, LLC, SEC Docket No. 2006-01, Decision Issuing Certificate of Site and Facility with Conditions ("Lempster Decision") (June 28, 2007), p. 45.

structure walls to 45 dBA.[3] Therefore, Lempster Wind proposed sound level waiver agreements ("Neighbor Agreements") to a few potentially affected property owners, as was explicitly permitted by the Town of Lempster Agreement and the Committee's Decision.[4] These agreements have 30 year life spans, and are not temporary construction annoyance agreements. They, therefore, do not support the Intervenors' claims relative to this proposed condition.

D. **Buttolph Group Condition Request No. 12F (Prohibition on temporary widening of Groton Hollow Road under any circumstance).** Paragraph 7.5 of the Applicant's agreement with the Town of Rumney, which is a condition of the Certificate of Site and Facility, expressly states: "the Town may authorize such temporary measures as may be reasonably necessary to enable the passage of wide loads, so long as the existing condition of the road is restored subsequent to the construction period." Because the Town of Rumney has agreed to this condition (as well as numerous others designed to protect Rumney residents on Groton Hollow Road and elsewhere), there is no basis for seeking a rehearing on this proposed condition. If the Intervenors are not pleased with the provisions of the Rumney Agreement, they should address their concerns to the proper officials within the Town of Rumney, not the Subcommittee. The Applicant stands by its position that the Rumney Agreement was the result of extensive public consultations with various Rumney officials. All provisions were discussed and reviewed in publicly noticed Rumney Board of Selectmen meetings. Although the Intervenors dispute this, they simply cannot deny that the Agreement was signed by the Rumney

[3] *See* Application of Lempster Wind, LLC, SEC Docket No. 2006-01, Order/Certificate of Site and Facility ("Lempster Order") (June 28, 2007), Appendix IV, Additional Conditions Pertaining to Noise, pp. 38-40.
[4] *See* Lempster Order, Appendix III, Agreement Between Town of Lempster and Lempster Wind, LLC, p. 34, and Lempster Decision, p. 45 (incorporating Lempster Agreement provisions into Certificate conditions.)

Selectmen and submitted as the Town of Rumney's only exhibit in this docket by the Town's Attorney who stated at the adjudicative hearings that the Rumney Agreement "satisfies the official concerns of the Town of Rumney with respect to this Project." Tr. Day 1, Morning Session – November 1, 2010, p. 26. As the foregoing demonstrates, there is no good reason for the Subcommittee to rehear the decision denying this condition.

The Matters Complained of in Paragraph 5 of the Intervenors' Motion Do Not Constitute Good Reason for Rehearing

6. The Intervenors' first complaint in paragraph 5 of their Motion is that rehearing is warranted because Subcommittee deliberations indicate that greater weight was placed on a written report regarding property values than upon the Intervenors' expert who underwent "extensive cross-examination." This argument is without merit and should be rejected because it overlooks that the Subcommittee may properly rely on the written report notwithstanding that its authors were not subject to cross-examination, and is also free "to accept or reject such portions of the testimony or of exhibits as it saw fit." *N.H. Milk Dealers Association v. N.H. Milk Control Board,* 107 N.H. 335, 343 (1966). Thus, because it was entirely proper for the Subcommittee to rely on the comprehensive Lawrence Berkeley National Lab report in examining the Project's anticipated effects on property values instead of on the Intervenors' witness, the first section of paragraph 5 of the Intervenors' Motion does not constitute a valid basis for rehearing.

7. Intervenors' second argument in paragraph 5 of their Motion states that the Subcommittee must reassess the views of the Grafton County Commissioners and other applicable planning commissions and municipal governing bodies "given the dramatic

changes in the political realities that have occurred in the wake of the November 2010 elections." Motion, p. 10. In support of this request, the Intervenors note that the Decision and Order reference the position of Martha B. Davis, the former Grafton County Commissioner from District 3, instead of the position of the current Grafton County Commissioner (Omer C. Ahern, Jr.).

The Intervenors' contentions are without merit for several reasons. The Intervenors fail to mention that the letter of support from Ms. Davis was sent on Grafton County Commissioners letterhead and was co-signed by County Commissioner Raymond Burton, both of whom signed the letter in their official capacities as Grafton County Commissioners, and who held their positions as County Commissioners at the time the adjudicative hearings were being held. By contrast, Mr. Ahern's letter dated April 4, 2011, was submitted after the adjudicative hearings had concluded. More significantly, there is nothing in Mr. Ahern's letter to indicate that he was submitting it in his capacity as a County Commissioner or that he was presenting anything other than his own personal views about the Project. Thus, inasmuch as Mr. Ahern's letter constitutes "public comment," it has been properly considered by the Subcommittee as indicated on page 9 of its May 6, 2011 Decision. ("The Subcommittee has considered the views and comments of the public…) Accordingly, the Subcommittee's failure to specifically note Mr. Ahern's personal views is of no consequence. Furthermore, even if Mr. Ahern's letter had been written in his official capacity, the Subcommittee's failure to note them in its Decision or Order is inconsequential as nothing in RSA 162-H requires the Subcommittee to consider the views of County Commissioners. Rather, the Subcommittee, must find that the Project site will not unduly interfere with the orderly

development of the region, after giving "due consideration to the views of municipal and regional planning commissions and municipal governing bodies." RSA 162-H:16, IV (b). Because County Commissioners are not among the officials listed in the foregoing statute, and given that the Towns of Groton, Rumney, Plymouth and Holderness were all represented by counsel, actively participated in this docket, and provided their views to the Subcommittee on several issues, including orderly development of the region, there is absolutely no basis for arguing that rehearing is necessary to (re)consider their views.

Conclusion

8. As demonstrated by the information presented above, the Intervenors' Motion fails to meet the standard for rehearing in several respects. First, the Intervenors have failed to demonstrate that the Subcommittee acted unlawfully or unreasonably with respect to any of the matters alleged in the Motion. Second, to the extent that it seeks rehearing of the decision to allow the Applicant to respond to proposed conditions, the Motion is untimely. Third, many of the reasons presented for rehearing are merely criticisms of deliberations statements and do not reference or specify the portions of the Subcommittee's Decision or Order that are allegedly unlawful or unreasonable as required by RSA 541:4. Fourth, the Intervenor's Motion does not present any "good reason" for a rehearing; the matters complained of were not based on evidence that was overlooked or misconceived, and the Intervenors instead make false allegations regarding the Applicant. And finally, in many instances the Motion merely reasserts the Intervenors' prior arguments and requests a different outcome.

WHEREFORE, for all of the foregoing reasons, the Applicant respectfully requests that the Subcommittee deny the Intervenors' Motion for Rehearing and grant such other and further relief as it deems appropriate.

Respectfully submitted,

Groton Wind, LLC
By Its Attorneys
Orr & Reno, P.A.

Dated: June 15, 2011

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Certificate of Service

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

6/15/11
Date

Susan S. Geiger

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