

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

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**In the matter of the  
Application for Certification  
Pursuant to RSA 162-H of  
GROTON WIND LLC**

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**Docket No. 2010-01**

**OBJECTION OF COUNSEL FOR THE PUBLIC TO APPLICANT'S  
CONTESTED MOTION FOR RECONSIDERATION AND/OR REHEARING**

Counsel for the Public, by his attorneys, the Office of the Attorney General, hereby objects to the Applicant's Contested Motion for Reconsideration and/or Rehearing, as such applies to the Sub-Committee's decision concerning the conditions on avian species. Counsel for the Public objects because the Applicant's motion is without merit and only rehashes the arguments made previously. See Applicant's 77-Page Post Hearing Brief, dated April 1, 2011 at 48-56, and Applicant's Response to Proposed Conditions, dated April 5, 2011 at 11. Furthermore, Counsel for the Public urges the Sub-Committee to stand by its decision to impose the conditions about which the Applicant complains because they are more than adequately supported by the evidence in the record including the testimony of Trevor Lloyd-Evans, both as prefiled direct and upon cross examination, and the cross examination of Mr. Gravel, and because they are necessary to the approval of the Application.

The Sub-Committee is authorized by statute to include "such reasonable terms and conditions as the committee deems necessary" and "such reasonable monitoring procedures as may be necessary" within the certificate. RSA 162-H:16, VI. The Sub-

Committee has the discretion to do this even if no party suggests such conditions and even if the Applicant opposes them. Moreover, arguably, the record evidence requirement for issuing the certificate does not apply to the Sub-Committee's decision to require particular conditions that it believes are "reasonable" and "necessary."

*Compare* 162-H:16, II (decision to issue certificate must be based on the record) *with* RSA 162-H:VI (conditions may be made as committee deems reasonable and necessary). The legislature clearly knew how to require an evidentiary basis when it wanted to and determined that with respect to conditions, it would trust the discretion of the Sub-Committee. Requiring an evidentiary basis for every condition would unnecessarily tie the hands of the Sub-Committee to prevent it from including terms and conditions to address future uncertainty and risk. These conditions are often used in Site Evaluation Committee Proceedings to resolve such uncertainties in favor of granting a certificate. In this case there was ample proof that the uncertainties and risks existed where even the Applicant's own avian expert freely admits that it has no basis to determine what population effects windfarm caused mortality might have on avian species. The Applicant should be more careful about what it asks for – without the conditions the Applicant has not met its burden of dealing with potential future impacts of the project and thus without the conditions, no certificate can be issued. As a result, if the Sub-Committee determines to remove the bird and bat conditions complained of, the evidence supporting the Application is lacking because of the lack of data concerning populations and the result should be that the Sub-Committee must deny the Application.

Finally, that the studies may cost the Applicant something is not an appropriate consideration where the protection of the State and its natural resources from the potentially harmful and certainly unknown effects of the Applicant's proposed project is the issue. What price should the Sub-Committee place on the lives of listed species of raptors that were observed flying over or near the site? In the context of this case and the Applicant's business, spending \$1 million to \$1.5 million on additional necessary work is not unreasonable. *See* Transcript, Day 2 --A.M. at 25 (project cost will be approximately \$120 million); Transcript, Day 5 – P.M., at 106-107 (Iberdrola Renewables had reportedly received \$577 million in taxpayer funded subsidies from the federal government); Transcript Day 2 – AM at 26-27 (project anticipating receipt of “a little north of \$30 million” in tax payer funded grant). The cost of protecting the State's natural environment is probably well within the contingency already provided in the project budget. *See also* Application at 5 (Iberdrola Renovables Balance Sheet showing cash in the amount of €251 million).

In the end, the Applicant's motion is nothing more than another effort to argue the same case it presented at the hearing and in its extensive Post Hearing Briefs, and does not point to any material issue the Sub-Committee overlooked or misconstrued.

Wherefore, Counsel for the Public prays that the Committee enter an order denying the Applicant's Motion, and for such other and further relief as may be just.

Respectfully submitted this 16th day of June 2011,

COUNSEL FOR THE PUBLIC

By his attorneys

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**Certificate of Service**

I, Peter C.L. Roth, do hereby certify that I caused the foregoing to be served upon each of the parties on the attached Service List.

Dated: June 16, 2011

/s/ Peter CL Roth \_\_\_\_\_  
Peter C.L. Roth