THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Buttolph/Lewis/Spring Intervenor Group, pro se

v.

New Hampshire Site Evaluation Committee

Rule 10 Appeal from Administrative Agency

Site Evaluation Committee Docket 2010-01

Brief of Appellant, Buttolph/Lewis/Spring Intervenor Group

By: James Buttolph

170 Quincy Road

Rumney, NH 03266

603-786-2654

on behalf of the Buttolph/Lewis/Spring Intervenor group

Rule 10 a) Names of parties and counsel

- Name of the party seeking review of the order.

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170 Quincy Road
Rumney, NH 03266
603-786-2654

Cheryl Lewis
Baker River Campground, LLC
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Rumney, NH 03266

Carl S. Spring
331 Groton Hollow Road
Rumney, NH 03266

- Names of all other parties of record

Groton Wind, LLC (Applicant)
Town of Groton
Town of Rumney
Town of Plymouth
Town of Holderness
The Mazur Group

- **Dr. Lawrence A. Mazur, 774 Quincy Road, Rumney, NH 03266**

- **o Richard Wetterer, Shanware Pottery, 1819 Rte 25 Rumney, NH 03266**
- **o Kathleen Park, 1819 Rte 25, Rumney, NH 03266**
- **o Christine G. DeClercq-Mazur, 774 Quincy Road, Rumney, NH 03266**
- **o Theodore Mazur, 774 Quincy Road, Rumney, NH 03266**
- **o Sarah Mazur, 774 Quincy Road, Rumney, NH 03266**

- Name of Counsel for the Site Evaluation Committee:

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- Name of Counsel for the Public, Office of the Attorney General:

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Senior Assistant Attorney General
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- Name of Counsel for Groton Wind, LLC

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Concord, NH 03302-3550

Rule 10 B) Administrative Agencies Findings & key orders and filings

- Decision granting Certificate of Site and Facility with Conditions (Attachment 1)

- Order and Certificate of Site and Facility with Conditions (Attachment 2)

- Buttolph/Lewis/Spring Intervenor Group Motion for Rehearing (Attachment 3)

- Applicant Objection to Intervenor's Motion (Attachment 4)

- Copy of Order on Motion(s) for Rehearing (Attachment 5)

Rule 10 C) Questions presented

I. Did the agency err in its interpretation of its mandate pursuant to RSA 162-H:1? RSA 162-H:1 enshrines in statute the state's requirement to strike a balance between the need for energy and the effect on the environment. In striving for that balance, the state must consider the extent to which this particular proposed Energy Facility is likely to contribute to state energy production and carbon mitigation goals pursuant to RSA 162-H:1. The Committee appeared to conclude that this wind farm is exempt from a critical examination of the Energy Facility's anticipated production and carbon mitigation performance due to its qualification as a "Renewable Energy Facility" pursuant to RSA 352-F. The intervenors believe that this is a critical error in interpretation on the part of the SEC.

Preserved: Buttolph/Lewis/Spring Intervenor Group Final Brief (April 1, 2011)

Preserved: Buttolph/Lewis/Spring Intervenor Group Motion for Rehearing (June 5, 2011)

II. Did the agency err in its conclusion that adverse impacts from this energy facility are "reasonable" pursuant to RSA 162-H:16, given the Committee's understanding of its mandate pursuant to RSA 162-H:1 referenced above?

Preserved: Buttolph/Lewis/Spring Intervenor Group Motion for Rehearing (June 5, 2011)

Rule 10 D) Provisions of Statutes

- RSA 162-H; RSA 362-F (Attachment 6)

Rule 10 F) Statements of Facts and Statement of the Case

I. Parties and Interests

On March 26, 2010, Groton Wind, LLC, ("Applicant") filed with the Site Evaluation Committee ("Committee") an Application for a Certificate of Site and Facility ("Application") to construct and operate a renewable energy facility ("Facility" or "Project") consisting of 24 wind turbines each having a nameplate capacity of 2 megawatts ("MW") for a total nameplate capacity of 48 MW. Applicant's Exhibit App.1. On April 26, 2010, the Vice-Chairman of the Committee accepted the Application as administratively complete. The Chairman then appointed a Subcommittee ("Subcommittee") to review the Application as provided in RSA 162-H:6-a, III and RSA 162-H:4, V. See, Order Accepting Application for Certificate of Site and Facility (issued April 26,2010).

The Facility is proposed to be located in the Town of Groton in Grafton County. Applicant Exibit. App. 1, at 6. The proposed site for the Facility ("Site") consists of 4,180 acres and is bounded by Route 25 to the North, Tenney Mountain Ski Resort to the East, the Forest Society's Cockermouth Forest to the South, and Halls Brook Road to the West. Exhibit. App. 1, at 6. This area consists of two distinct ridgeline features known as Tenney Mountain and Fletcher Mountain, which are separated by a valley known as Groton Hollow. Exhibit. App. 1, at 6. Both ridges are northeast/southwest oriented and range in peak elevation from 1,850 to 2,300 feet. Exhibit. App. 1, at 6. As proposed, the Facility will consist of twenty-four (24) Gamesa G87 wind turbines. Exhibit. App. 1, at 17. Twelve wind turbines will be situated generally in a north-south direction along the Tenney Ridge, six turbines will be oriented on the southern knob of Fletcher Mountain, and six turbines will oriented on the northwest knob of Fletcher Mountain. Exhibit. App. 1, at 6. The overall height of each wind turbine is proposed to be approximately 399 feet from base to the tip of the rotor. Exhibit. App. 1, at 17-18, 21.

The Town of Groton; Town of Rumney; Town of Plymouth, and the Town of Holderness each requested and were granted intervenor status. A number of individuals also requested and were granted intervenor status. However, these individuals were required to "combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings" as provided in RSA 541-A:32, III c. These individuals were ordered to form two intervenor groups. One group consisted of James M. Buttolph, Carl S. Spring, and Cheryl Lewis (the "Buttolph/Lewis/Spring" group). The other group consisted of Annie Valdmanis, Dr. Lawrence A. Mazur, Richard Wetterer, Kathleen Park, Christine G. DeClercq-Mazur, Theodore Mazur and Sarah Mazur (the "Mazur" group). Annie Valdmanis voluntarily withdrew as an intervenor. The New Hampshire Attorney General appointed Special Assistant Attorney General Peter C.L. Roth as Counsel to the Public pursuant to RSA 162-H:9.

II. Procedural background

On May 6, 2011, a duly appointed Subcommittee of the Site Evaluation Committee ("Committee") issued its Decision granting a Certificate of Site and Facility ("Certificate") with conditions ("Decision") to Groton Wind, LLC, ("Applicant"), authorizing the construction and operation of a renewable energy facility ("Facility" or "Project") consisting of 24 Gamesa G82 turbines each having a nameplate capacity of 2 megawatts ("MW"), for a total nameplate capacity of 48 MW to be located in the Town of Groton, Grafton County, New Hampshire ("Site"). The Decision was issued after the Committee held adjudicatory proceedings on November 1-5, 2010 and April 22-23, 2011. The Committee heard from 21 witnesses, and was presented with over 162 exhibits, along with oral and written statements from interested members of the public. The Committee held a public hearing in Grafton County as required by law, conducted several technical sessions, and visited the proposed Site.

On May 13, 2011, the Applicant filed a Contested Motion for Clarification. Thereafter, on June 5, 2011, the Buttolph/Lewis/Spring Group of Intervenors ("Intervenors") filed a Motion for Rehearing.

The Applicant objected to Intervenors' Motion on June 15, 2011. On June 6, 2011, the Applicant filed a Contested Motion for Reconsideration and/or Rehearing. The Intervenors' Objected to Applicant's Motion for Reconsideration and/or Rehearing on June 11, 2011 and Counsel for Public Objected to the Applicant's Motion for Rehearing on June 16, 2011. On July 8, 2011, the Subcommittee held a public meeting for the purpose of deliberations. On August 8, 2011, the Committee issued its Order on Motions for Clarification, Rehearing, and Reconsideration. This order provided relief on one of the conditions as requested by the applicant, but left the remainder of the Decision intact.

F) Arguments

I. Striking a balance pursuant to RSA 162-H:1, considering RSA 352-F

RSA 162-H:16 sets forth requirements against which the Committee shall evaluate the application. The Committee must find, in part, that:

> - The Site and Facility will not unduly interfere with the orderly development of the region with ***due consideration*** having been given to the views of municipal and regional planning commissions and municipal governing bodies. (RSA 162-H:16 IV, (b)). (Emphasis added).
>
> - The Site and Facility will not have an ***unreasonable*** adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety. (RSA 162-H:16 IV, (c)). (Emphasis added).

As noted in the above RSA escerpts, the legislation clearly vests with the Committee the responsibility to make a series of judgments as noted by the terms "due consideration" and "unreasonable". As the Committee has acknowledged, guidance for the Committee in making these judgments can be found in the RSA's Declaration of Purpose which provides a context within which these judgments are to be made. (Deliberations Day 3, pg 26 line 20 – 23). This Declaration states in part "... the legislature finds that it is in the public interest to maintain a *balance* between the *environment* and the *need* for new energy facilities in New Hampshire; ...that full and timely *consideration of environmental consequences* be provided; ...that the state ensure that the construction

and operation of energy facilities is treated as a significant aspect of land-use planning in which *all environmental, economic, and technical issues are resolved* in an integrated fashion, all to *assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles*..." (Emphasis added).

As articulated in the Intervenors' final brief dated April 1, 2011 and again in the Intervenors' Motion for Rehearing dated June 5, 2011, it is the Intervenors' position that, due to the small amount of energy produced, and the minimal carbon mitigation that was likely to be achieved as compared to the significant negative impacts associated with the construction and operation of this renewable energy facility, the Applicant failed to demonstrate that there are enough positive benefits from this facility to offset the obvious negatives. In assessing the alleged positive benefits, the Intervenors requested that the Committee place significant weight on the conclusions of Subcommittee member Michael Harrington because of his expertise, as a PUC engineer, in matters of production engineering analysis.[1] Mr. Harrington appeared to agree with the Intervenors' position regarding the overstatements by the applicant in the areas of energy production and carbon mitigation. (Deliberations Day 3, pg 12 line 14 – pg 14 line 14; pg 16 line 8 – pg 17 line 3). However, Mr. Harrington went on to opine that the output from this facility is irrelevant, so long as there is some level of contribution to state goals. He argued, apparently persuasively to the full Committee, that since this energy facility employs "Renewable energy generation technology" as defined in RSA 362-F:1, the construction of this particular facility is, by definition, automatically declared by the legislature to be "in the public interest" regardless of the extent to which the facility is judged to contribute positive benefits. (Deliberations Day 3, pg 28 line 5 –16). Underscoring this point, Mr. Harrington concluded that due to the classification of this energy facility as a renewable energy facility, the only basis for assessing balance pursuant to RSA 162-H:1 insofar as the generation capabilities are concerned, rests with the applicant's analysis of whether or not they will make enough money on the project to justify it (Deliberations Day 3, pg 24 lines 14 –18). However, it is important to note that RSA 162-H makes no exception for facilities that happen to be categorized as utilizing renewable technology pursuant to

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[1] The Intervenors did not urge the committee to assess significant weight to Mr, Harrington's opinions on matters of legal interpretation. For the record, we recognize Mr. Harrington's expertise on matters of engineering analysis only.

RSA 362-F. RSA 162-H applies to all energy facilities, regardless of categorization, assuming the facility meets the appropriate nameplate requirements mandating Committee jurisdiction. The wording in RSA 162-H:1's Declaration of Purpose makes it crystal clear that the legislature did not intend for a corporation's estimate of profitability to be the preeminent determining factor when it comes to assessing the positive aspects of an energy facility. Such an interpretation leads to the logical conclusion that, when developing findings with respect to the degree to which a facility interferes with the orderly development of the region, creates an adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety pursuant to RSA 162-H:16 IV, (c), all that is required insofar as the State of New Hampshire is concerned are infinitesimal contributions to state goals. Under this interpretation, it is difficult to imagine any scenario under which a wind farm certificate of site and facility would be denied because the entire Declaration of Purpose, with respect to the requirement to achieve "balance", would be rendered irrelevant when considering wind farm applications. How can one assess reasonableness of known adverse effects when removed from consideration is the degree to which these wind turbines perform as advertised? Unfortunately, the Committee had already voted and determined most of the findings during deliberations before the Intervenors' position regarding balance was even discussed. It appears clear, by the record, that reasonableness of the adverse impacts of this wind farm was judged by committee members without any meaningful background analysis of the extent to which this wind farm actually will produce usable electricity and mitigate carbon, beyond that which was claimed by the Applicant.

II. Conclusion that adverse impacts from this energy facility are "reasonable" pursuant to RSA 162:H-16.

With respect to Mr. Harrington's assessment of the extent to which this facility mitigates carbon in the atmosphere, he stated "people can draw their own conclusions… the one I personally drew was that they [the Applicant] were a little bit generous with themselves [regarding the extent to which carbon was likely to be mitigated] and, probably the Intervenors were probably more accurate." It appears that Mr. Harrington, and ultimately the Committee, considered this exaggeration on the part of the Applicant to be merely "a little bit generous" (Deliberations Day 3, pg 13 lines 1-9). As noted in the Intervenor's final brief, it is appropriate to point out that the Intervenors concluded, and Mr.

Harrington apparently agreed, that the Applicant likely exaggerated the extent to which this facility would mitigate carbon by an overwhelming magnitude, in the order of a nearly 20:1 overstatement. (Intervenor's final brief dated April 1, 2011, pg 7, paragraph 1).

In discussing Mr. Harrington's interpretation of the applicability of RSA 362-F, Chairman Getz attempted to rephrase Mr. Harrington's conclusions regarding profit motive as the sole determining factor in assessing acceptable levels of electricity production. According to Chairman Getz's interpretation, if "there is a slight differential about the output, about the capacity factor, etcetera, that that's not something that's in as much itself should be determinative of the outcome, I guess, if it's within a reasonable range." However, in agreeing with the Intervenor's assessment that capacity factors are likely overstated by the applicant, Mr. Harrington established a quantitative assessment that relates to Chairman Getz's "reasonable range". Mr. Harrington stated that it is of no concern to the committee if, for example, the Applicant claims that this facility will operate at 36 percent capacity factor when the reality might be 22 percent. (Deliberations Day 3, Pg 24 lines 14-18). Clearly, an overstatement of nearly 40%, as suggested by Mr. Harrington in his hypothetical example, is unreasonable. Considering the Committee deliberation regarding the balancing argument articulated by the Intervenors did not occur until after the committee had voted on reasonableness when determining most of its findings pursuant to (RSA 162-H:16 IV, (b and c)), this newly understood extent of overstatement on the part of the Applicant may well have shifted any one of a number of findings from "reasonable" to "unreasonable".

Rule 10 G) State the jurisdictional basis for the appeal

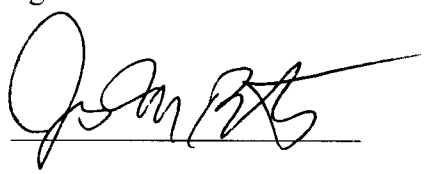
Pursuant to RSA 541:6, "within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the Supreme Court."

Rule 10 H) - Conclusions

The very purpose of these proceedings is enshrined in the Declaration of Purpose of RSA 162-H:1. This declaration states at the onset that "... the legislature finds that it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire..." . Everything that follows throughout this RSA relates to reasonableness judgments with balance in mind. The committee is required to document a series of findings pursuant to RSA 162-H:16, ultimately resulting in a decision to grant a Certificate of Site and Facility. However, the Committee, throughout its proceedings, deliberations, and finding declarations, systematically deemphasized any analysis of the degree to which this particular energy facility quantitatively addresses the need for energy and carbon mitigation. In fact, the Intervenors demonstrated, and the committee apparently agreed, that the extent to which this facility will actually produce usable electricity and mitigate carbon from the atmosphere was significantly overstated by the Applicant. The Committee ultimately concluded that anticipated production numbers are essentially irrelevant to this proceeding, and by extension, ultimately concluded that virtually any facility categorized as a "renewable Energy Facility" pursuant to RSA 362-F should be granted a certificate of site and facility, with all of its associated adverse effects, regardless of a particular facility's specific production characteristics or ability to mitigate green house gas. This interpretation by the Committee is in complete discord with the Declaration of Purpose articulated in RSA 162-H:1, and as a result, this Certificate issuance was inappropriate and unlawful.

Rule 10 I. Certification

I hereby certify that, upon information and belief every issue issue specifically raised has been presented to the Subcommittee and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.



James M Buttolph, pro se

I, James Buttolph, do hereby certify that I caused the foregoing to be sent by electronic mail , U.S. mail, or hand delivered to the persons currently identified as parties on this Docket. An original plus 9 copies have also been hand delivered to the Supreme Court of the State of New Hampshire.

Attachments:

- Decision granting Certificate of Site and Facility with Conditions 5/6/11 (Attachment 1)

Also http://www.nhsec.nh.gov/2010-01/documents/110506decision.pdf

- Order and Certificate of Site and Facility with Conditions 5/6/11 (Attachment 2)

Also http://www.nhsec.nh.gov/2010-01/documents/110506order.pdf

- Buttolph/Lewis/Spring Intervenor Group Motion for Rehearing 6/5/11 (Attachment 3)

Also http://www.nhsec.nh.gov/2010-01/documents/110605motion.pdf

- Applicant Objection to Intervenor's Motion (Attachment 4)

Also http://www.nhsec.nh.gov/2010-01/documents/110615app_objection.pdf

- Copy of Order on Motion(s) for Rehearing (Attachment 5)

Also http://www.nhsec.nh.gov/2010-01/documents/110811order.pdf

- RSA 162-H; RSA 362-F (Attachment 6)

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 48 MW Wind Turbine Facility in Groton, Grafton County, New Hampshire

DECISION GRANTING CERTIFICATE OF SITE AND FACILITY WITH CONDITIONS

May 6, 2011

APPEARENCES: Susan S. Geiger, Esq., Douglas L. Patch, Esq., of Orr & Reno, for the Applicant; Bernard Waugh, Esq., of Gardner, Fulton & Waugh, for the Town of Rumney; Miles Sinclair, Selectman, Laura Spector, Esq., of Mitchell Municipal Group, P.A. for the Town of Groton, John McGowan, Esq., of Donahue, Tucker & Ciandella, for the Towns of Plymouth and Holderness; James Buttolph, Cheryl Lewis, Carl Springer, *pro se*, Intervenors; Richard Wetterer, Dr. Lawrence Mazur, Sarah Mazur, Christine DeClercq-Mazur, Theodore Mazur, *pro se* Intervenors; Evan Mulholland, Esq., Assistant Attorney General, Peter Roth, Esq., Senior Assistant Attorney General, Counsels for the Public.

TABLE OF CONTENTS

I. APPLICATION

On March 26, 2010, Groton Wind, LLC, ("Applicant") filed with the Site Evaluation Committee ("Committee") an Application for a Certificate of Site and Facility ("Application") to construct and operate a renewable energy facility ("Facility" or "Project") consisting of 24 wind turbines each having a nameplate capacity of 2 megawatts ("MW") for a total nameplate capacity of 48 MW. Ex. App. 1.[1] On April 26, 2010, the Vice-Chairman of the Committee accepted the Application as administratively complete. The Chairman then appointed a Subcommittee ("Subcommittee") to review the Application as provided in RSA 162-H:6-a, III and RSA 162-H: 4, V. See, Order Accepting Application for Certificate of Site and Facility (issued April 26, 2010).

The Applicant is a limited liability company owned and managed by Iberdrola Renewables, Inc. ("Iberdrola Renewables"). Iberdrola Renewables is in various stages of financing, constructing, and operating 40 wind energy facilities in the United States. Ex. App. 1, at 3, 56. Iberdrola Renewables is owned by Iberdrola Renewables Holding, Inc., which in turn is owned by Iberdrola Renovables ("Iberdrola Renovables"), a company with 10,700 MW of installed wind energy capacity worldwide. 3,591 MW of that capacity is located within the United States. Ex. App. 1, at 4, 56.

The Facility is proposed to be located in the Town of Groton in Grafton County. Ex. App. 1, at 6. The Facility does not yet have a formal street address but is accessible from an

[1] The exhibits introduced by the parties have been designated in the following manner: (1) Applicant's exhibits – Ex. App. ___; (2) Town of Groton's exhibits – Ex. Groton ___; (3) Town of Plymouth's exhibits – Ex. Plymouth ___; (4) Town of Rumney's exhibits – Ex. Rumney ___; (5) Counsel for the Public's exhibits – Ex. PC ___; Buttolph Intervenor Group's exhibits – Ex. Buttolph ___; and (7) Mazur Intervenor Group's exhibits – Ex. Mazur ___.

access road off of Groton Hollow Road in Rumney, New Hampshire.[2] Ex. App. 1, at 6. The proposed site for the Facility ("Site") consists of 4,180 acres and is bounded by Route 25 to the North, Tenney Mountain Ski Resort to the East, the Forest Society's Cockermouth Forest to the South, and Halls Brook Road to the West. Ex. App. 1, at 6. This area consists of two distinct ridgeline features known as Tenney Mountain and Fletcher Mountain, which are separated by a valley known as Groton Hollow. Ex. App. 1, at 6. Both ridges are northeast/southwest oriented and range in peak elevation from 1,850 to 2,300 feet. Ex. App. 1, at 6. The Applicant has leased 4,180 acres from landowners in order to construct the Facility, but will retain only approximately 3% of this acreage after the construction of the Facility. Ex. App. 1, at 6. As proposed, the Facility will consist of twenty-four (24) Gamesa G87 wind turbines. Ex. App. 1, at 17. Twelve wind turbines will be situated generally in a north-south direction along the Tenney Ridge, six turbines will be oriented on the southern knob of Fletcher Mountain, and six turbines will oriented on the northwest knob of Fletcher Mountain. Ex. App. 1, at 6.

Each wind turbine consists of a four section tower that will be approximately 256 feet tall, a nacelle containing a drive train, gearbox and generator measuring 28 feet in length, 10 feet in height, and 11 feet in width, and a rotor consisting of three fiberglass composite blades each measuring 139 feet in length. Ex. App.1, at 17-18. The overall height of each wind turbine is proposed to be approximately 399 feet from base to the tip of the rotor. Ex. App. 1, at 17-18, 21.

In addition to the turbines, the Project will consist of: (1) the roads; (2) an electrical collection system; (3) an electrical switchyard; (4) transmission lines; and (5) a voltage step-up facility; (6) an operations and maintenance building; and (7) a meteorological tower. Ex. App. 1, at 17, 40-42.

[2] While the Project is located in the Town of Groton, access to the Project is obtained from Route 25 and Groton Hollow Road in Rumney, New Hampshire.

The Applicant anticipates extending and using the existing logging road at the end of Groton Hollow Road in order to have access to the Facility. Ex. App. 1, at 40. The Applicant will upgrade approximately 2.4 miles of existing roads by improving the gravel surface, grading, and drainage.[3] Ex. App. 1, at 40. Approximately 9.3 miles of new road will be constructed to support the Project. Ex. App. 1, at 40.

The individual turbines will be connected to a 34.5 kV collection system. Ex. App. 1, at 40. Each turbine will be connected to a 2,350 kV transformer and connection cabinet. Ex. App. 1, at 40. Several turbines will be loop-connected through the collection circuits and junction boxes, which, in turn, will be connected to the Facility's switchyard. Ex. App. 1, at 40. It is anticipated that the switchyard will be pole-mounted near the operations and maintenance building. Ex. App. 1, at 41. The collection system will utilize underground and overhead power lines. Ex. App. 1, at 41. As proposed, underground cables will be installed in a trench approximately 4 feet in depth and will be accompanied by a fiber-optic cable for communication purposes. Ex. App. 1, at 41. Overhead cables will be installed on single poles approximately 40 feet in height. Ex. App. 1, at 41.

Once operational, the Facility is expected to have an average annual net capacity factor of 33-36% and expected to produce approximately 144,375 to 157,680 megawatt hours ("MWH") of electricity – an amount sufficient to meet the needs of about 19,000-21,000 homes. Ex. App. 1, at 23. The generated output will be transmitted via 34.5 kV transmission line. Ex. App. 61, at 2. This line will run from the Project to Route 25 and will be comprised of approximately 37 poles, 10 to 12 of which will be located on the existing leased premises and approximately 25 of which will be located along easements on private property. Ex. App. 61, at 2. Once the line

[3] The Applicant asserts that the roads will have to be improved in order to comply with all existing regulations. Tr., 11/03/2010, Morning Session, 67-68.

reaches Route 25, it will travel along Route 25 on poles currently utilized by New Hampshire Electric Cooperative. The interconnection line will eventually leave Route 25 and will connect with a 34.5 kV-115 kV voltage step-up facility located on a 5 acre parcel of privately-owned land in Holderness, New Hampshire. Ex. App. 62, at 2. The output will then be transmitted to a Northeast Utilities Beebe River Substation via a 115 kV line. Ex. App. 62, at 2.

As part of the Facility, the Applicant also seeks to construct an operations and maintenance complex. Ex. App. 1, at 41. This complex will include a single story 4,000 square feet building, a 50 by 75 feet parking area and outdoor storage. Ex. App. 1, at 41. The Project will also include a permanent meteorological tower, which will replace the currently existing temporary meteorological tower, with a height of 262 feet. Ex. App. 1, at 42.

The Applicant contends that it has the financial, technical and managerial capabilities to construct and operate the Facility. Ex. App. 1, at 56-57. The estimated cost of the construction of the Facility is approximately $117-$120 million. Tr., 11/02/2010, Morning Session, at 25. It is anticipated that the Project will be financed by Iberdrola Renewables through equity investments by Iberdrola Renovables' corporate parent, Iberdrola S.A. Ex. App. 1, at 56-57. The Applicant asserts that Iberdrola S.A.'s investment in the Project will be supported by long-term contracts for the purchase of power and renewable energy credits from the Project. The Project may also qualify for other tax credits or grants from the federal government as provided by the American Recovery and Reinvestment Act of 2009. Ex. App.1, at 56-57.

II. PROCEDURAL BACKGROUND

The Application was filed on March 26, 2010. See, RSA 162-H:7. As required by RSA 162-H:6-a, I, and NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES SITE 301.01, copies of the Application were made available to each state agency having jurisdiction to regulate matters pertaining to the siting, construction, or operation of the Facility. Notice of the filing of the Application was also provided by Counsel to the Committee, to the Select Board and Town Clerk for the Town of Groton, the North Country Council, and the Grafton County Commissioners. The Committee did not receive information from any state agency indicating that the Application did not contain sufficient information to carry out the purposes of RSA 162-H. See, Order Accepting Application for Certificate and Site Facility, at 2 (issued April 26, 2010). The Application was deemed sufficient and accepted. Id. A Subcommittee was then designated to consider the Application. See, Order Designating Subcommittee Pursuant to RSA 162-H:6-a (issued May 7, 2010).[4]

On June 25, 2010, the Subcommittee issued a Report of Prehearing Conference and Technical Session and a Procedural Order scheduling discovery, hearings, and other procedural deadlines. See, Report of Prehearing Conference and Technical Session and Procedural Order (issued June 25, 2010).

On June 28, 2010, the Subcommittee visited the Site and inspected various places within or adjacent to the Site and the proposed location of the Facility. The Subcommittee held a Public Informational Hearing on June 28, 2010, at Plymouth State University in Plymouth, Grafton

[4] The following members of the Committee (or statutory designees) were designated to serve on the Subcommittee in this docket: (1) Thomas B. Getz, Chairman, Public Utilities Commission; (2) Robert Scott, Director, DES Air Resources Division; (3) Brook Dupee, Senior Health Policy Analyst, Department of Health and Human Services; (4) Richard Boisvert, State Archeologist, Department of Historical Resources; (5) Michael Harrington, Staff Engineer; Public Utilities Commission; (6) Stephen Perry, Chief, Inland Fish and Game Department; (7) Eric Steltzer, Energy Policy Analyst, Office of Energy and Planning; (8) Charles Hood, Administrator, Department of Transportation; (9) Donald Kent, Designee, NH Natural Heritage Bureau.

County, New Hampshire. At the informational hearing, the Applicant presented general information about the Facility and answered questions from the public. The Subcommittee also heard public comment regarding the Project.[5]

Technical sessions were held on August 9, September 27, and September 28, 2010. The purpose of the technical sessions was to permit the parties to obtain additional discovery and information from each other.

An adjudicatory hearing in this docket commenced on November 1, 2010, and continued through November 5, 2010, at which time, the proceeding was recessed to the call of the Chair. At the commencement of the adjudicatory hearings, the Subcommittee was advised that the Applicant had designated an alternate route for the transmission line that would deliver power from the project area in Groton to the Beebe River Substation. The re-designated interconnection with the substation would be required to interconnect at 115 kV, necessitating the construction of a step-up transformer station not contemplated in the original Application. The Subcommittee was also informed that the New Hampshire Division of Historical Resources (DHR) had rejected the project area form submitted by the Applicant as part of its federal review under Section 106 of the National Historic Preservation Act of 1996 (as amended). (See, Letter from Linda Ray Wilson, New Hampshire Division of Historic Resources and Memorandum from Nadine Peterson (Oct. 28, 2010)). Ex. Buttolph 29.

On December 3, 2010, the Sub-Committee found it to be in the public interest to extend deliberations in this docket until April 26, 2011, to allow hearing and deliberation pertaining to the alternate transmission line route and the issues pertaining to historic sites. See, Order on Pending Motions and Further Procedural Order (issued Dec. 14, 2010). On December 22, 2010, the Subcommittee issued a Report of Prehearing Conference/Technical Session and a Procedural

[5] Approximately 82 questions and comments were submitted by the public to the Applicant.

Order scheduling additional discovery, hearings, and other additional procedural deadlines necessary to address the issues raised by new submissions. See, Report on Prehearing Conference/Technical Session and Procedural Order (issued Dec. 22, 2010). In accordance with the Subcommittee's Order, the parties participated in additional Technical Sessions on February 23, 2011 and March 7, 2011. On April 22 and 23, 2011, the Subcommittee resumed its adjudicative hearing.

In addition to the hearings, the Subcommittee received numerous comments from the public in regards to the Application. Members of the public have identified a number of concerns including, but not limited to, the issues of effect of the Facility on aesthetics, and historic sites; the natural environment; the local real estate market, the orderly development of the region, and public health and safety. The Subcommittee has considered the views and comments of the public as expressed at public hearings and in writing in its consideration of the record in this docket. The transcripts of public comments can be reviewed on the Committee's website or at the Office of the Chairman of the Committee. Written public comment was also reviewed by the Subcommittee and is available for public review at the office of the Chairman of the Committee.

III. INTERVENTION AND HEARINGS

The Town of Groton was permitted to intervene in the proceedings in this docket. Participation of local municipalities is consistent with RSA 162-H:16, IV(b), requiring the Subcommittee to give due consideration to the views of municipal and regional planning agencies and municipal governing bodies with respect to the orderly development of the region. Participation of local communities is also consistent with RSA 541-A: 39. See, Report of

Prehearing Conference and Technical Session and Procedural Order, at 6 (issued June 25, 2010). The Applicant did not object to the Town of Groton's intervention.

The Town of Rumney was also permitted to intervene. Rumney abuts the project area and the Applicant proposes to access the Project through roads in Rumney. The transmission lines will run through the Town of Rumney, and the turbines will be visible from various locations in the Town of Rumney. See, Report of Prehearing Conference and Technical Session and Procedural Order, at 7 (issued June 25, 2010). Id. The Applicant did not object to the Town of Rumney's intervention.

The Town of Plymouth also filed a Motion to Intervene, alleging that the rights, duties and substantial interests of the Town of Plymouth and its residents may be affected by this proceeding due to the proximity of the Town to the proposed development site. The Applicant did not object to the Town of Plymouth's intervention. The Subcommittee granted the Town of Plymouth's Motion finding that it has a substantial interest in the outcome of the case where it either abuts or is in close proximity to the Site. See, Report of Prehearing Conference and Technical Session and Procedural Order, at 7 (issued June 25, 2010).

Once the alternative transmission route and the location of the step-up transformer station were identified, the Town of Holderness also sought intervention. Counsel for the Public and the Town of Groton assented to the Motion to Intervene. The Applicant partially objected to the Motion, arguing that the Town's participation should be limited to "issues relating solely to the facilities that are proposed to be located in the Town of Holderness." The remaining parties did not file formal objections and did not assent to the Town of Holderness' motion. The Subcommittee granted the Town of Holderness's Motion on February 28, 2011. See, Order on Motion Pertaining to the Participation of the Town of Holderness (issued February 28, 2011).

The following residents of the Town of Rumney sought to intervene in these proceedings: Annie Valdmanis, Lawrence Mazur, Richard Wetterer, Kathleen Park, Christine G. DeClerq-Mazur, Sarah Mazur, Theodore Mazur, Carl S. Spring and the members of his household, James M. Buttolph, and Cheryl Lewis. These residents asserted that they live in close proximity to the proposed site and will suffer individualized harm, either as a result of perceived health and safety issues, or by virtue of the reduction of the value of their real property. The Applicant objected to the Rumney residents' request, stating that their issues and concerns were similar to the concerns that would be effectively represented by the Town of Rumney and Counsel for the Public. The Subcommittee granted the request for intervention to the residents of the Town of Rumney and consolidated them in two groups: a "Buttolph/Lewis group, including Mr. Buttolph, Ms. Lewis and Mr. Spring ("Buttolph/Lewis Group"), and the Mazur/Park/Valdamis/Wetterrer group of intervenors including the Mazurs, Ms. Park, Ms. Valdamis, and Mr. Wetterer ("Mazur Group"). See, Report of Prehearing Conference and Technical Session and Procedural Order, at 7, 8 (issued June 25, 2010); Order on Partially Assented Motion to Amend order and Notice and Supplemental Order Regarding Intervention (issued July 7, 2010).

Pursuant to RSA 162-H:9, I, Senior Assistant Attorney General Peter C.L. Roth and Assistant Attorney General Evan Mulholland were appointed as Counsel for the Pubic in order to "represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy." RSA 162:9, I. Counsel for the Public is accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action.

Between November 1, 2010 and November 5, 2010, and April 22 and April 23, the Subcommittee held adjudicatory hearings. The Subcommittee met in adjudicatory hearings on **7**

separate days and heard testimony of various witnesses. In addition, the Subcommittee held a hearing to take public comments and conducted a site visit.

On April 7-8 and 11, the Subcommittee met publicly to deliberate on the Application. During this time, the Subcommittee addressed the criteria for granting of a Certificate under RSA 162-H:16 and the arguments in support of and against the issuance of a Certificate. After careful consideration and intensive deliberation, the Subcommittee voted to approve the Application and to issue a Certificate of Site and Facility for the Facility as set forth in the Application, as amended, subject to a number of conditions. See, RSA 162-H:4, I(b) (authorizing the Committee to grant a Certificate subject to conditions.)

IV. POSITIONS OF THE PARTIES

A. Applicant

As a part of its Application, the Applicant submitted the pre-filed testimony of the following individuals:

- Edward Cherian, New England Development Director for Iberdrola Renewables, Inc., Ex. App. 1;
- Pablo Canales, Senior Vice President and Chief Financial Officer for Iberdrola Renewables, Inc., Ex. App. 1;
- John D. Hecklau, Executive Vice-President for EDR Environmental Services, LLC, Ex. App. 1, Tr., 11/01/2010, Afternoon Session, at 57;
- Hope E. Luhman, Assistant Director for Cultural Resources and Senior Archaeologist of The Louis Berger Group, Inc., Ex. App. 1;
- Nancy B. Rendall, Senior Environmental Scientist for Vanasse Hangen Brustlin, Inc., Ex. App. 1;
- Adam J. Gravel, Project Manager for Stantec Consulting., Ex. App. 1;
- Michael J. Leo, Senior Project Manager/Civil Engineer for Vanasse Hangen Brustlin, Inc., Ex. App. 1;

- Robert D. O'Neal, INCE, CCM, Principal of Epsilon Associates, Inc., Ex. App. 1;
- Kevin E. Devlin, Vice President, Commercial Operations for Iberdrola Renewables, Inc., Ex. App. 1;

The Applicant also submitted the pre-filed testimony of Trevor Mihalik, a Senior Vice President of Finance for Iberdrola Renewables, Inc. (Ex. App. 5); supplemental pre-filed testimony of Robert D. O'Neal (Ex. App. 5), Michael J. Leo (Ex. App. 5), Adam J. Gravel (Ex. App. 5), Nancy B. Rendall (Ex. App. 5), Peter J. Walker (Ex. App. 5), Hope E. Luhman (Ex. App. 5), Edward Cherian (Ex. App. 5) and John D. Hecklau (Ex. App. 59); second supplemental pre-filed testimony of Nancy B. Rendall (Ex. App. 64), Peter J. Walker (Ex. App. 64), Edward Cherian (Ex. App. 61), Adam J. Gravel (Ex. App. 66), Hope E. Luhman (Ex. App. 51), John D. Hecklau (Ex. App. 60), Robert D. O'Neal (Ex. App. 68); and third supplemental pre-filed testimony of Adam J. Gravel (Ex. App. 67), Nancy B. Rendall (Ex. App. 65), Peter J. Walker (Ex. App. 65), Hope E. Luhman (Ex. App. 52), and Edward Cherian (Ex. App. 62).

The Applicant asserts that the information contained in its Application, pre-filed testimony, and exhibits clearly demonstrates that the Applicant has the financial, managerial and technical capacity to construct, manage, and operate the Facility in accordance with the conditions of the Certificate. In addition, the Applicant asserts that the Facility will not unduly interfere with the orderly development of the region and will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, natural environment, or public health and safety. Therefore, the Applicant asserts that the Subcommittee should grant the Application and issue a Certificate to the Applicant.

B. <u>Counsel for the Public</u>

Counsel for the Public retained Gregory C. Tocci of Cavanaugh Tocci Associates, Inc., to study potential noise impacts of the Project and Mr. Trevor Lloyd-Evans of the Manomet Center for

Conservation Sciences to study the effect of the Facility on birds and flying mammals. Counsel for the Public submitted pre-filed and supplemental pre-filed testimony from Gregory C. Tocci and pre-filed testimony from Trevor Lloyd-Evans. Ex. PC 1-3.

Counsel for the Public asserts that the Subcommittee should require the Applicant to conduct a three-year post-construction bird and bat mortality study. In addition, Counsel for the Public asserts that in order to prevent unreasonable adverse effect of the Project on public health and safety, the Subcommittee should ensure that the noise generated by the Project will not exceed 40 dBA at residential uses and should apply a baseline sound level requirement. Finally, Counsel for the Public asserts that the Applicant did not satisfy its burden and failed to demonstrate that the Project will not have an unreasonable adverse effect on historic sites of the region and requests the Subcommittee to retain its powers in order to review the Applicant's proposal for mitigation of the adverse effects caused by the Project on the region's historical resources.

C. Town of Groton

The Town of Groton generally supports the issuance of a Certificate. The Applicant entered into an Agreement with the Town of Groton addressing the Town's concerns including, but not limited to, the issues of noise, road usage, blasting, and decommissioning. Ex. App. 32. The Applicant also agreed that the Agreement with the Town of Groton should be a condition of the Certificate issued in this docket. Tr. 11/01/2010, Morning Session, ay 70.

In addition, the Groton Board of Selectmen and Groton Planning Board advised the Subcommittee that the Project was well received and was supported by the vast majority of the townspeople. See, Ex. App. 1, at 39, 40. As a result, the Groton Board of Selectmen and Planning Board expressed their support to the construction and operation of the Facility and

urged the Subcommittee to approve the Application, with conditions as contained in the Agreement with the Applicant. See, Ex. App. 1, at 39, 40.

D. Town of Rumney

During the adjudicatory proceedings, the Town of Rumney advised the Subcommittee that it entered into an Agreement with the Applicant addressing concerns raised in connection with the anticipated construction and operation of the Project. Tr. 11/01/2010, Morning Session, at 25; Ex. App. 7; Rumney 1. According to the Town of Rumney, this Agreement satisfied the "official concerns" of the Town of Rumney with respect to the Project. Tr. 11/01/2010, Morning Session, at 26. Therefore, the Town of Rumney does not oppose the construction of the Project, and requests the Subcommittee to incorporate the Agreement between the Town and the Applicant into conditions of the Certificate. Tr., 11/01/2010, Morning Session, at 26.

E. Town of Plymouth

The Town of Plymouth submitted the pre-filed testimony of Casino Clogston, Fire Chief for the Town of Plymouth. See, Ex. Plymouth 1. Chief Clogston expressed concerns that neither the Plymouth nor Rumney Fire Departments have sufficient equipment and training to address a fire emergency which may be caused by the Project. Ex. Plymouth 1, at 4. The Town of Plymouth requested the Subcommittee to require the Applicant to provide training to its Fire Department and to supply the Plymouth Fire Department with two "Type 6 brush trucks", two six-person ATVs, three forestry high pressure portable pumps and associated equipment. Ex. Plymouth 1, at 4.

In addition, the Plymouth Board of Selectmen expressed concerns with the visual impact of the turbines on aesthetics and the economy of Plymouth. The Town of Plymouth urged the

Subcommittee to consider the relocation of the turbines. See, Correspondence from the Board of Selectmen of the Town of Plymouth, December 6, 2010.

F. Town of Holderness

The Town of Holderness requests the Applicant be required to comply with the Town's "dark sky" ordinance as applied to the voltage step-up facility located within the Town's boundaries. The Applicant agreed to comply with the Town's "dark sky" ordinance, as applied to the step-up facility, for so long as the provisions of the ordinance are not in conflict with applicable fire, safety and building codes.

G. Buttolph/Lewis/Spring Group of Intervenors

The Buttolph/Lewis intervenors submitted pre-filed testimony from the following:

- James Buttolph, Ex. Buttolph 24;
- Carl Spring, Ex. Buttolph 26;
- Cheryl Lewis, Ex. Buttolph 25; and
- Michael S. McCann, CPA., Ex. Buttolph 1-K.

In his pre-filed testimony, Mr. Buttolph urges the Subcommittee to carefully scrutinize the Project's impact on wild life, economy, and real estate market of the region. In addition, Mr. Buttolph asserts that turbine sound emissions may have an adverse effect on the health of the people living in proximity to the Project. Ms. Lewis asserts that the Project will have an adverse effect on the region in general and, specifically, the campground owned by her. Ms. Lewis claims that increased noise levels and the visibility of the turbines will adversely impact the attraction and visual appeal of the region to tourists. The Intervenors also assert that the Project may have an adverse effect on water quality of the region and may affect the value of local real estate. Mr. Spring asserts that the Project will have an adverse effect on "the people of Rumney

and surrounding areas, as well as aesthetics, water quality, the natural environment, public health and safety, tourism and other aspects of local life and environment." Ex. Buttolph 26, at 3.

H. Mazur/Park/Valdamis/Wetterer Group of Intervenors

The Mazur intervenors submitted pre-filed testimony from the following individuals:

- Lawrence A. Mazur, MD, Ex. Mazur 13; and
- Christine Mazur and Sarah Mazur, Ex. Mazur 14; and
- Prefiled testimony of Richard Wetterer dated August 31, 2010.

Christine Mazur and Sarah Mazur assert that the turbines will be visible from the residential areas of the Town of Rumney and the noise will reverberate and echo between the mountain slopes of the Baker River Valley and cause adverse effects on the aesthetics, natural environment, and health and safety. In addition, Dr. Mazur submits that the sound generated by the Project may cause irreparable damage to the health and safety of the residents living nearby. Mr. Wetterer echoes Dr. Mazur's concerns, and urged the Subcommittee to consider a number of articles addressing the impact of noise generated by wind turbines on human health. Dr. Mazur expressed concerns that the turbines may cause wind turbine syndrome and/or vibroacoustic disease in certain individuals in the population that lives near the Project.

V. ANALYSIS AND FINDINGS

A. State Permits

Irrespective of the process employed by the Site Evaluation Committee, RSA 162-H requires an applicant to file applications for all state permits that would normally be required for the Project. The construction and operation of the Facility requires the Applicant to make application for the following permits, certifications and determinations: (1) Standard Dredge and Fill Permit, commonly known as a "Wetlands Permit"; (2) Alteration of Terrain Permit; (3)

Section 401 Water Quality Certification; (4) Federal Aviation Administration (FAA) 7460-1 Determinations; and, (5) Section 106 Review (lead by the U.S. Army Corps of Engineers in consultation with the N.H. Division of Historical Resources). The FAA Determinations and the Section 106 Review are part of the process under federal law and not subject to the jurisdiction of the Committee. The Section 401 Water Quality Certification, although a federal program, is delegated to the Department of Environmental Services.

1. Wetland Permit

The Standard Dredge and Fill Application, commonly referred to as the "Wetlands Permit" is issued under the authority of RSA 458-A:3 and in accordance with administrative regulations promulgated by the New Hampshire Department of Environment Services ("DES"). See, NH CODE OF ADMINISTRATIVE RULES, ENV-WT 300, *et. seq*.

The Applicant filed its Wetland Permit Application with the Wetlands Bureau of the New Hampshire Department of Environment Services in March, 2010. See, Ex. App. 2, Appx. 1. The Applicant asserted that the construction of the Project will have a permanent effect on 1.63 acres and a temporary effect on 0.33 acres of wetlands, intermittent streams, and perennial streams. Ex. App. 1, at 71.

On June 29, 2010, staff members of DES conducted a field inspection of the Project. On July 26, 2010, DES issued a Progress Report requesting the Applicant to consider a number of mitigation conditions, including, but not limited to an "in-lieu fee." See, Wetlands Bureau 07/26/2010 Progress Report.

On October 8, 2010, after considering all provided documents and comments, DES issued its Final Decision, approving the issuance of a Wetlands Permit, subject to certain conditions. See, Ex. App. 5, Appx. 51. Specifically, DES found that the Project will impact

more than 20,000 square feet of wetlands and will be a "major project" as defined by the NH CODE OF ADMINISTRATIVE RULES ENV-WT 303.02. See, Ex. App. 5, Appx. 51. Twenty-five conditions were recommended . See, Ex. App. 5, Appx. 51. For example, DES required the Applicant to restore 14,450 square feet of wetlands and streams that will be temporarily impacted by the Project. See, Ex. App. 5, Appx. 51. In addition, DES required the Applicant to make an "in-lieu fee" payment of $150,000 to the DES Aquatic Resources Mitigation Fund in order to upgrade nine existing stream crossings along Groton Hollow Road and to provide technical assistance to the Society for the Protection of New Hampshire Forests. See, Ex. App. 5, Appx. 51.

Pursuant to RSA 162-H:16, I, the Certificate in this docket will be conditioned upon the Applicant's compliance with the conditions and limitations identified within the Wetlands Permit. The Wetlands Permit is incorporated into the Certificate to be issued in this docket. Pursuant to RSA 162-H:4, III, the Subcommittee delegates its authority to approve amendments to the Wetlands Permit.

2. Alteration of Terrain Permit

RSA 485-A:17 regulates activity that involves construction that significantly alters terrain characteristics in such a manner as to impede natural runoff or create an unnatural runoff. See, RSA 458-A:17. Alteration of Terrain Permits are issued by DES, Water Division.

The Applicant anticipates that approximately 5,036,579 square feet or 116 acres of land will be disturbed during the construction of the Project. Ex. App. 2, Appx. 2. The Applicant submitted an Alteration of Permit Application to the Water Division on October 8, 2010. The Water Division issued an Alteration of Terrain Bureau Final Decision approving the permit, with conditions. See, Ex. App. 5, Appx. 51; Ex. App. 2, Appx. 2.

The Water Division's approval of the Applicant's request "includes permit conditions from the Watershed Management Bureau (WMB) to satisfy §401 Water Quality Certification concerns, and from the Drinking Water and Groundwater Bureau (DWGB) to satisfy concerns regarding ledge blasting and monitoring Best Management Practices." See, Ex. App. 5, Appx. 51. Among other things, the permit requires the Applicant to employ the services of an environmental monitor to inspect the Site during the activities causing the alteration of terrain. See, Ex. App. 5, Appx. 51. The Alteration of Terrain Permit contains 22 conditions. See, Ex. App. 5, Appx. 51.

The Certificate of Site and Facility will be conditioned upon the Applicant's compliance with the conditions and limitations identified by the Alteration of Terrain Permit issued by DES, and said permit, including all of its enumerated conditions and limitations, is incorporated into the Certificate to be issued in this docket. Pursuant to RSA 162-H:4, III, the Subcommittee delegates its authority to approve amendments to the Alteration of Terrain Permit to the New Hampshire Department of Environmental Services, Water Division.

3. Federal Review

The Applicant is required to address the following requirements in order to construct and operate the Project in compliance with federal law: (1) §401 Water Quality Certification review; (2) FAA 7460-1 Determinations; and (3) §106 Review (lead by the U.S. Army Corps of Engineers (USACE) in consultation with the N.H. Division of Historical Resources). We find the federal process to be helpful in informing the Subcommittee.

a. Section 401 Water Quality Certification

Under §404 of the Clean Water Act (33 U.S.C. § 1344), the United States Army Corps of Engineers (USACE), may issue general permits for the discharge of dredged or fill material

into the navigable waters at specified disposal sites to the States. See, 33 U.S.C. §1344 (a)(e). On July 2, 2007, USACE issued a statewide Programmatic General Permit ("PGP") for minimal-impact activities. Subject to certain exclusions and conditions, the PGP eliminated the need to apply for separate approval from USACE under §404 of the Clean Water Act for minor work in New Hampshire when that work is authorized by the New Hampshire Department of Environmental Services, Wetlands Bureau.

In addition, §401 of the Clean Water Act (33 U.S.C. §1341) regulates any activity including, but not limited to, the construction or operation of facilities, which may result in a discharge into navigable waters of the United States. In order to comply with §401, the Applicant must obtain a license or permit from the State in which the discharge originates. See, 33 U.S.C. §1341, *et. seq.*

On March 30, 2007, the New Hampshire Department of Environmental Services issued a §401 Certificate to the Applicant. Under this Certificate, the Applicant must comply with the following terms and conditions: (1) construction or operation of the Project should meet New Hampshire water quality standards; (2) application under the USACE PGP should be reviewed by DES to determine whether additional conditions or individual §401 Certification application is necessary; (3) construction of the Project under the PGP should not commence until all other applicable permits and approvals have been granted; and (4) all applicable conditions of the PGP should be followed. See, Water Quality Certification dated May 30, 2007, at 5.

The Project is also required to comply with §404 of the Clean Water Act, which is administered by the United States Army Corps of Engineers under the provisions of a general programmatic permit. On September 3, 2010, the Corps of Engineers confirmed, in writing, that

the Project meets the requirements of the general programmatic permit for New Hampshire. See, Ex. App. 5, Appx. 41.

b. FAA 7460-1 Determination

Under 14 C.F.R. §77.13, each sponsor who proposes any construction or alteration of a structure more than 200 feet above ground level shall notify the Federal Aviation Administration ("FAA") of such proposed construction or alteration. 14 C.F.R. § 77.13 (a)(1).

It is anticipated that the turbines and the meteorological tower will be approximately 428 feet high. Therefore, under 14 C.F.R. §77.13, the Applicant is required to notify FAA of the construction of the Facility. On March 16, 2010, the Applicant submitted 25 Notices of Proposed Construction or Alteration for the wind turbines and the meteorological tower to FAA. See, Ex. App. 3, Appx. 8.

On March 25, 2010, FAA issued 25 Determinations of No Hazard to Air Navigation as applied to the 24 wind turbines and meteorological tower, determining that the turbines and the tower will not create a hazard to air navigation under conditions that the Applicant implements the following requirements: (1) each turbine must be marked and/or lightened in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, white paint/synchronized red lights – Chapter 4,12 and 13 (turbines); and (2) the Applicant will complete and return to FAA Form 7460-2, Notice of Actual Construction or Alteration, when the Applicant abandons the Project or within 5 days after the turbine construction reaches its greatest height. See, App. 5, Appx. 49.

c. §106 Review – The National Historic Preservation Act

In this case, the Project requires review pursuant to §106 of the Historic Preservation Act of 1996. (16 U.S.C. 470, *et. seq.*) The lead federal agency for §106 review in this docket is the

USACE. Pursuant to Section 106, the USACE must consult with DHR. We note that the §106 process is an interactive process that may continue beyond the time frames set forth in RSA 162-H:6-a.[6] However, review under Section 106 of the National Historic Preservation Act has a direct bearing on our decision whether construction and operation of the Facility will have an unreasonable adverse effect on historic sites in the region. Our consideration of historic sites is addressed in detail under Section V, C 3(3), below.

B. Consideration of Alternatives

The Subcommittee should consider available alternatives in deciding whether the objectives of the statute would be best served by the issuance of the Certificate. See, RSA 162-H:16, IV.

Historically, the Committee considers alternatives presented by the Applicant. See, Decision Granting Certificate of Site and Facility with Conditions, Application of Granite Reliable Power, LLC, 2008-04 (July 15, 2009), ("[t]he Site Evaluation Committee normally considers the evidence of alternatives presented by an applicant. The Committee also considers any other evidence in the record pertaining to alternative sites."). Accordingly, the Applicant explained its alternatives analysis which included: (1) different site locations; (2) different size of the Project; (3) interconnection alternatives; (4) different turbine types; and (5) different road configurations. See, Ex. App. 1, at 45-53.

In selecting the Site, the Applicant sought to identify a site that would exhibit adequate speed and quality of the wind. See, Ex. App. 1, at 42. The Applicant also asserts that, when selecting the Site, it considered such factors as environmental appropriateness, community acceptance, distance to grid-interconnection, transmission access, accessibility of the Site to

[6] RSA 162-H:16, VI specifically recognizes that state or federal permit consideration may exceed the time frames set forth in RSA 162-H.

construction equipment and heavy machinery, economic factors, wetlands and water bodies, communication interference, cultural resource, wildlife habitat, and the fact that the minimum setback between towers and the nearest non-participating resident should be 2,700 feet and setback between the turbines and the public roads should be 2,400 feet. See, Ex. App. 1, at 42-44.

In undertaking its site choice analysis, the Applicant asserts that it considered a construction of an 80 MW Project with more turbines along Fletcher Mountain on additional land parcels. See, Ex. App. 1, at 45. However, the Applicant ruled out this alternative after determining that it would require very difficult engineering for access roads, a much greater length of road, and a more expensive interconnection. See, Ex. App. 1, at 45. In addition, the Applicant indicates that this alternative became unavailable when a landowner became disinterested in the Project. See, Ex. App. 1, at 45.

In addition, the Applicant asserts that it considered the alternative interconnection points including: (1) interconnection into the 230 kV lines that transit Groton west of the Site; (2) interconnection with the Rumney Substation; and (3) interconnection with Beebe River Substation at 34.5 kV level. See, Ex. App. 1, at 45; Tr., 11/01/2010, Afternoon Session, at 18. The Applicant ruled out interconnection with the Rumney Substation when it determined that Rumney Substation did not have adequate capacity for the interconnection. See, Ex. App. 1, at 45. The Applicant further determined that the relatively small size of the Project would not economically support construction of a new substation to step-up voltage to interconnect at the 230 kV level. See, Ex. App. 1, at 45. Therefore, the Applicant initially sought to interconnect directly with the Beebe River Substation at 34.5 kV level. Ex. App. 1, at 23. The owner of the Beebe River Substation, PSNH, conducted additional internal studies of the Project and raised

concerns pertaining to the Applicant's proposed interconnection at 34.5 kV level. Ex. App. 1, at 23. Consequently, the Applicant decided to interconnect at the 115 kV voltage level. Ex. App. 1, at 23; App. 61, at 2-3.

The Applicant also chose an alternative interconnection route. Originally, the Applicant considered a route along Quincy Road. Tr. 11/01/2010, Afternoon Session, at 23. However, the Town of Rumney opposed that route. Tr. 11/01/2010, Afternoon Session, at 23. In addition, the Applicant discovered that the New Hampshire Electric Cooperative was unable to document easements for the existing poles and anchors. Tr. 11/01/2010, Afternoon Session, at 23; Tr. 11/01/2010, Afternoon Session, at 23. Therefore, the Applicant decided in favor of connecting the Site with the existing power line running along Route 25 and connecting the Project with the Northeast Utilities connection via alternative overhead power line. Tr. 11/01/2010, Afternoon Session, at 23; Ex. App. 61, at 2-3; Ex. App. 62, at 4. This power line will follow existing logging roads and skidder trails, where possible, and will include multiple angles and shifts in orientation. See, Ex. App. 62, at 1. It is anticipated that the cleared width of the right-of-way for this power line will be approximately 35 feet. See, Ex. App. 62, at 1. Ultimately, the Applicant decided in favor of the Route considered by this Subcommittee because it takes under consideration concerns expressed by the residents of the Groton Hollow Road and New Hampshire Electric Cooperative, and reduces the length of the overhead line by approximately 1.5 miles. Ex. App. 61, at 2-3.

Furthermore, the Applicant asserts that it considered Mitsubishi, Suzlon, and General Electric turbines as alternatives to the Gamesa G87 model. See, Ex. App. 1, at 46. However, it determined that, considering the wind data received from Groton Wind modeling, Gamesa G87 turbines will be the most efficient turbines. See, Ex. App. 1, at 46. The Applicant also asserts

that in selecting Gamesa G87 it considered the fact that its company has an extensive experience in constructing and operating this model of the turbines. See, Ex. App. 1, at 46.

Alternative layouts, as well as other road configurations, were also considered. See, Ex. App. 1, at 46-53. For example, the Applicant considered access to the West Ridge from Halls Brook Road and Access to the East Ridge via Tenney Mountain. See, Ex. App. 1, at 47-48. However, the Applicant asserts that the access from the Halls Brook Road did not meet engineering specifications. See, Ex. App. 1, at 48. As to the access via Tenney Mountain, the Applicant ruled out this alternative when it determined that the access road from NH Route 3A was too steep for the transportation of wind turbine components and the use of the ski area access road could create traffic and safety conflicts. See, Ex. App. 1, at 48. In addition, although the Applicant determined that the access from Groton Hollow Road represented the best available alternative, it considered seven major alternative route alignments while finalizing the Project's layout. See, Ex. App. 1, at 48-53; Ex. App. 1, Figure 7. As a result, the Applicant chose the east ridge access, allowing the Applicant to utilize an existing bridge across Clark Brook and to minimize the number of stream crossings, allowing for a shorter route to the midpoint of East Ridge Crate Road, and consisting of approximately 8,400 feet of road length. See, Ex. App. 1, at 49; Ex. App. 1, Figure 7. As to the west ridge access, the Applicant chose the alternative, avoiding stream crossings associated with other routes, minimizing grading requirements, and providing the shortest feasible route from Groton Hollow Road to the west ridge. See, Ex. App. 1, at 52.

We will also discuss the Buttolph/Lewis assertion that the Subcommittee should deny certification of the Project because the Project is not the most efficient and the most beneficial renewable energy facility alternative. Tr. 11/05/2010, Morning Session, at 99-100. Specifically,

Mr. Buttolph stated that a biomass renewable energy facility would be more efficient and cause less impact than a wind energy facility. Tr. 11/05/2010, Morning Session, at 99-100. A similar argument was addressed by the Subcommittee in its decision granting the Certificate of Site and Facility to the Laidlaw Berlin BioPower, LLC. See, Decision Granting Certificate of Site and Facility with Conditions, Application of Laidlaw Berlin BioPower, LLC, Docket No. 2009-02, at 37 (Nov. 8, 2010). There, the intervenor similarly asserted that another biomass facility would present a better alternative then the one proposed by the Applicant. Id. In Laidlaw, it was noted that such arguments would require consideration of the entire universe of energy facilities rather than "available alternatives" as set forth in RSA 162-H. Id. RSA 162-H does not require the Subcommittee to consider every possible alternative, including ones unavailable to the Applicant. Id.

The Buttolph/Lewis Intervenors also pose a generalized balancing argument and urge the Subcommittee to deny the Certificate, alleging that the negative aspects associated with the construction and operation of the Facility outweigh its benefits. See, Final Brief of Intervenor Group Buttolph/Lewis/Spring Group of Intervenors dated April 1, 2011, at 3. According to the Intervenors, RSA 162-H:16, IV and RSA 162-H:1-19 support their position that the Subcommittee should balance the benefits and negatives of the Facility in reaching the decision whether to grant the Certificate to the Applicant. See, Final Brief of Intervenor Group Buttolph/Lewis/Spring Group of Intervenors dated April 1, 2011, at 3.

Under RSA 162-H:16, IV, the Subcommittee should consider other relevant factors bearing on the objectives of RSA 162-H:1-19 in deciding whether the objectives of the statute would be best served by the issuance of the Certificate. See, RSA 162-H:16, IV. The objectives of RSA 162-H:1-19 and factors bearing on such objectives are defined by RSA 162-H:1:

> . . . it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire; that undue delay in construction of needed facilities be avoided and that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion, all to ensure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles.

RSA 162-H:1, I.

The Intervenors urge the Subcommittee to deny the Certificate because, according to them, the State of New Hampshire will gain only a minimal benefit as a result of construction of the Facility, but the Project will have a significant negative impact on the environment, economy, aesthetics, and health and safety of the region. See, Final Brief of Intervenor Group Buttolph/Lewis/Spring Group of Intervenors dated April 1, 2011, at 36. Specifically, the Intervenors assert that the Facility's benefits will be minimal where its capacity factor is much lower that the capacity factors of other renewable energy facilities; the Applicant will sell the output generated by the Facility out of state; the Facility will substitute for a minimum amount of carbon dioxide emissions; and there is no conclusive evidence that would demonstrate the Project's economic benefit to the region. See, Final Brief of Intervenor Group Buttolph/Lewis/Spring Group of Intervenors dated April 1, 2011, at 4-14. Furthermore, according to the Intervenors, the Project will have an unreasonable adverse effect on the natural environment of the region, may pose significant risk to the health and safety of the residents of Groton Hollow Road or to any other residents living near the Project, may have adverse effect on the value of real estate, and, finally, may cause annoyance and other health complications to the

residents exposed to the noise generated by the Project. See, Final Brief of Intervenor Group Buttolph/Lewis of Intervenors dated April 1, 2011, at 14-30. Therefore, the Buttolph/Lewis Intervenors assert that the potential negative effects of the Project clearly outweigh its minimal potential benefits and, consequently, does not serve the objectives of RSA 162-H:1. See, Final Brief of Buttolph/Lewis Intervenors dated April 1, 2011, at 36.

Counsel for the Public partially concurs with the position taken by the Buttolph/Lewis Intervenors and asserts that the Applicant failed to provide solid evidence demonstrating that there is a need for additional generation in New Hampshire, that the power produced by the Project will be used and will be available in New Hampshire, or that the Project will make a meaningful contribution to any perceived needs of the State of New Hampshire. See, Closing Memorandum and Proposed Conditions dated April 1, 2011, at 2.

In contrast, the Applicant asserts that the Project will meet the objectives of RSA 162-H:1, I by assisting with meeting the State's demand for renewable energy resources articulated in RSA 362-F and will reduce the greenhouse gas emissions in compliance with RSA 125-O:19, *et. seq*. See, Applicant's Post Hearing Brief dated April 1, 2011, at 16-17.

The Intervenors' balancing argument mistakenly conflates the general language of the Declaration of Purpose, RSA 162-H:1, with the specific findings required under RSA 162-H: 16. The Legislature's desire for a "balance between the environment and the need for new energy facilities in New Hampshire" is achieved by the statutory scheme adopted in RSA Chapter 162-H, and part and parcel of that balance is the requirement that the Site Evaluation Committee, or Subcommittee as the case may be, make specific enumerated findings in order to issue a certificate of site and facility. The findings, which focus on the capabilities of the applicant, whether the project would unduly interfere with the orderly development of the region, and

whether the project would have unreasonable adverse effects, constitute the test that an applicant must meet before a certificate is issued; if the test is failed then the certificate is denied.

The Intervenors essentially pose another test, a general balancing test, that is not contemplated under the statute and that is not justified by the Declaration of Purpose. While, in the prefatory language, RSA 162-H:16, IV does speak to the consideration of "other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate," that language does not give *carte blanche* authority to create a new test that would weigh negative impacts against benefits. Those other factors are properly considered in the context of the necessary findings set forth in subsections a, b and c of RSA 162-H:16, IV.

In a related vein, Counsel for the Public contends that the Applicant has not demonstrated the need for the project. Such may be the case but, RSA 162-H: 16 does not require a finding of need. Formerly, RSA 162-H:16, V, required a finding that construction was needed to meet the present and future need for electricity but the Legislature repealed that requirement.

In any event, while, at present, New Hampshire may not need additional electrical supply, the Applicant intends to sell its output to a Massachusetts based distribution company, Nstar. See, Tr., 03/22/2011, Afternoon Session, at 5-6. New Hampshire's resources are transmitted through the New England wide grid administered by ISO-New England and the state has recognized a need for low emission renewable electric power. RSA 362-F:1 states, "[i]t is . . . . in the public interest to stimulate investment in low emission renewable energy generation technologies in *New England* and, in particular, in New Hampshire, whether at new or existing facilities." RSA 362-F:1 (emphasis added). Therefore, the construction of the Project is consistent with legislative objectives insofar as it will supply renewable power for New England.

The Subcommittee has considered the alternatives and arguments introduced in this record and finds that the Intervenors' interpretation of the statute is erroneous. Nothing in the statute would permit the Subcommittee to conduct the generalized balancing analysis articulated by the Intervenors. The Subcommittee finds that the location and design for this renewable energy facility are reasonable considering the purpose and goals of RSA 162-H.

C. Statutory Criteria

In deciding whether to issue a Certificate to the Applicant, the Subcommittee must consider the following statutory factors: (1) whether the Applicant has adequate financial, managerial, and technical capability to assure construction and operation of the Facility in continuing compliance with the terms and conditions of the Certificate; (2) whether the Facility will unduly interfere with the orderly development of the region having considered the views of municipal and regional planning committees and municipal governing bodies; and (3) whether the Facility will have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety. See, RSA 162-H:16, IV.

1. Financial, Managerial, and Technical Capability

Under New Hampshire law, the Subcommittee must consider the Applicant's "financial, managerial and technical capability to assure construction and operation of the Facility in continuing compliance with the terms and conditions of the Certificate." RSA 162-H:16, IV (a).

The Applicant anticipates that it will cost between $117 and $120 million to construct the Facility. Tr. 11/02/2011, Morning Session, at 25. The Applicant asserts that it has adequate financial, managerial, and technical capacity to construct and operate the Facility in continuing compliance with the terms and conditions of the Certificate. See, Ex. App. 1, at 56-57. The Applicant's financial capacity is based on its affiliation with Iberdrola, S.A., the owner of 80%

of Iberdrola Renewables. In turn, Iberdrola Renewables is the principal owner of Iberdrola Renewables Holdings, Inc. See, Ex. App. 1, at 56-57; Tr. 11/02/2010, Morning Session, at 45-47. Iberdrola Renewables Holdings, Inc. is the sole owner of Iberdrola Renewables. See, Ex. App. 1, at 56-57; Tr. 11/02/2010, Morning Session, at 45-47. The Applicant asserts that it has financial capacity to construct and operate the Facility inasmuch as it will arrange for the capital needed for construction, finance, equipment orders, and long-term investment in the Project through Iberdrola, S.A. corporate structure. See, Ex. App. 1, at 56. The financing of the Project will be provided by Iberdrola Renewables through equity investments by Iberdrola S.A. Ex. App.1, at 56-57. It is anticipated that the investment in the Project by Iberdrola S.A. will be supported by long-term contracts for the purchase of power and renewable energy credits from the Project, as well as by a cash grant in lieu of investment tax credit from the federal government as provided by the American Recovery and Reinvestment Act of 2009. Ex. App. 1, at 56-57; Tr. 11/02/2010, Morning Session, at 26. At the adjudicatory proceeding held on March 22, 2011, the Applicant informed the Committee that it had reached a Power Purchase Agreement (PPA) with NStar. Tr. 03/22/2011, Afternoon Session, at 26. The PPA, although not finalized, includes the sale of electricity and renewable energy credits. Tr. 03/22/2011, Afternoon Session, at 26. Although the Applicant admits that it relies on the government's subsidies in construction of the Project and assuring that the Project will be profitable, it asserts that it does not need the investment tax credit or grants for the successful operation of the Facility. Tr. 11/02/2010, Morning Session, at 51-52. According to the Applicant, Iberdrola, S.A. is capable of providing such financing because it maintains a corporate bond rating of A- from Standard and Poor's and A3 from Moody's. See, Ex. App. 1, at 56. The Applicant's direct principal, Iberdrola Renewables, is capable of providing the financial support needed for the

construction and operation of the Project; it does not have any substantial debt and has over $9 billion in assets. Tr. 11/02/2010, Afternoon Session, at 23.

Significantly, the Applicant not only demonstrated its financial capability to construct and operate the Facility, but also demonstrated its financial capability to decommission the Project, if needed, by agreeing to provide a decommissioning fund assurance to the Town of Groton prior to the commencement of the construction of the Project in an amount equal to the site-specific decommissioning estimate or $600,000, which ever is greater. See, Ex. App. 32, ¶14.2.2.

The Applicant asserts that it has a sufficient technical and managerial capability to construct and operate the Project where its principal, Iberdrola Renewables, has already successfully constructed and currently operates 40 wind energy facilities in the United States including, among others, the Lempster Wind Project. Ex. App. 1, at 56; App. 3, Appx. 22. The Applicant explicitly asserts that "Groton Wind will construct and operate the Project consistent with Iberdrola Renewables' corporate commitment to meeting all applicable state and Federal OSHA safety regulations." Ex. App. 1, at 56.

The Applicant also submits that it has enough personnel to ensure successful construction and operation of the Facility, where Iberdrola Renewables employs a full time in-house construction management staff, including project managers, site managers, superintendents, and quality assurance inspectors. Ex. App. 1, at 56. According to the Applicant, the Project will be operated and maintained by a team of approximately 5 to 10 full-time locally based operations and maintenance personnel. Ex. App. 1, at 57; Tr. 11/02/2010, Morning Session, at 63.

The Project will also be equipped with a central supervisory, control and data acquisition system, which will provide remote operation of the wind turbines and will collect operation and performance data 24 hours per day. Ex. App. 1, at 57. In addition, the operation of the Project will be continuously monitored and controlled by Iberdrola Renewables' control center located in Portland, Oregon. Ex. App. 1, at 57.

Neither Counsel for the Public nor any Intervenor credibly disputes that the Applicant has sufficient financial, managerial and technical capacity to construct and operate the Project in accordance with the conditions of the Certificate.

The Subcommittee carefully reviewed all the exhibits, testimony, and comments regarding the financial, managerial, and technical capability of the Applicant and finds, subject to the conditions contained herein, that the Applicant has demonstrated the financial, managerial, and technical capability to construct and operate the Facility in accordance with the terms and conditions of the Certificate. It is noted, however, that under RSA 162-H, any transfer of the Certificate and amendments to the Certificate by the Applicant are required to be approved by the Committee. The Committee's authority to approve or deny a proposed transfer or amendment is set forth at RSA 162-H: 4, RSA 162-H: 5, I, and N.H. CODE OF ADMINISTRATIVE RULES, Site 203. Therefore, as a condition of the Certificate, it is required that the Applicant shall immediately notify the Site Evaluation Committee of any change in ownership or ownership structure of the Applicant and shall seek approval of the Site Evaluation Committee for such changes.

2. Orderly Development of the Region

RSA 162-H:16, IV (b) requires the Subcommittee to consider whether the proposed project will unduly interfere with the orderly development of the region with due consideration

given to the views of municipal and regional planning commissions and municipal governing bodies. RSA 162-H:16, IV (b).

a. Views of Municipal and Regional Planning Commissions and Municipal Governing Bodies

The Applicant has the support of Grafton County Commissioner for District #3, Martha B. Richards, and Grafton County Commissioner for District #2, Raymond S. Burton. The Project is supported by the Groton Board of Selectmen and Groton Planning Board, which advised the Subcommittee that the Project is welcomed by the vast majority of the townspeople and urged the Subcommittee to issue the Certificate to the Applicant, subject to the conditions contained in the Agreement between the Applicant and the Town. See, Ex. App. 1 at 39, 40; Ex. App. 5, Appx. 39-40; Ex. App. 32. The Agreement addresses a broad range of concerns including, but not limited to, site access, turbine requirements, site security, public communication and emergency response, use of public roads, noise and setbacks and containing liability, as well as an indemnification provisions.

The Applicant has also entered into an agreement with the Town of Rumney. See, Ex. Rumney 1. The Town of Rumney abuts the Project area. The agreement with the Town of Rumney addresses issues such as emergency response and turbine safety; site security; lines of communication and the use of public roads in Rumney. See, Ex. Rumney 1. In addition, the Agreement contains liability insurance requirements and indemnification provisions. See, Ex. Rumney 1.

The Town of Plymouth also intervened in these proceedings. At first, the Town of Plymouth did not oppose the Project, but requested that the Subcommittee order the Applicant to provide the Plymouth Fire Department two Type 6 Brush Trucks, two six-passenger ATV's and three high pressure forestry portable pumps. Tr. 11/04/2010, Morning Session, at 106, 117, 125.

Tr. 11/04/2010, Morning Session, at 106, 117, 125. However, on December 6, 2010, the Town of Plymouth supplemented its position in regard to the Project and asserted that the Project will have a negative effect on Plymouth's "character and scenic beauty." See, Letter from the Plymouth Board of Selectmen dated December 6, 2010. Thereafter, on April 5, 2011, the Town expressed its position that the Project will impact the real estate values in the region and requested the Subcommittee to condition the certificate upon requiring the Applicant to provide a "Property Value Guarantee" to impacted homeowners. See, Brief of the Town of Plymouth dated April 1, 2011, at 6.

The Town of Holderness also intervened. Holderness seeks only to ensure that, to the extent it is not inconsistent with other building codes, life safety codes and electrical codes, that the step-up transformer station be required to comply with the Town's "Dark Skies" ordinance limiting nighttime light pollution.

The North Country Council, the regional planning commission for all of Coos County and parts of Grafton and Carroll Counties, requests the Subcommittee to adopt, as a Condition to the Certificate, the agreement resulting from the negotiations between the Town of Groton and the Applicant. See, Letter from the North County Council dated October 19, 2010. North Country Council also urges the Subcommittee to consider conditions that would ensure that the Project will not interfere with the capacity of the region's transportation and emergency response system. See, Letter from the North County Council dated October 19, 2010.

Finally, the New Hampshire Timberland Owners Association, a trade association representing New Hampshire's entire forest products industry and timberland owners, asserts its position that the Project would "complement the property's forest management activities and

recreational uses." See, Letter from the New Hampshire Timberland Owners Association dated December 6, 2010.

Considering the views of the municipal and regional planning commissions and municipal governing bodies, the Subcommittee conditions the Certificate upon the Applicant's compliance with the conditions and limitations identified within the agreements with Towns of Rumney, Ex. Rumney 1,and Groton, Ex. App. 2. As to the requirements and concerns raised by the Town of Plymouth and the Town of Holderness, these concerns are more pertinent to the issues of human health and safety and the impact of the Facility on aesthetics, which are addressed in more detail below.

b. Economic Impacts

The Facility's effect on the economy and the real estate market of the region was vigorously disputed by the parties in terms of the "orderly development of the region" as that phrase is contained in RSA 162-H:16, IV (b).

The term "orderly development" is not defined within RSA 162-H. In the past, the Committee has considered matters that have a direct impact on the economic development of the region. See, Decision Granting Certificate of Site and Facility with Conditions, Application of Laidlaw Berlin BioPower, LLC, Docket No. 2009-02, at 58-59 (Nov. 8, 2010). The Subcommittee must consider whether the Project will unduly interfere with the "orderly development of the region", as opposed to isolated impacts on a limited number of residences or businesses in the region. RSA 162-H:16, IV (b); see also, Impact Food Sales v. Evans, 160 N.H. 386, 397 (2010) (defining the rules of statutory construction and stating that in the absence of a statutory definition, the term should be interpreted in accordance with the plain meaning of the words used with the focus on the statute as a whole and with presumption that the legislature did

not use superfluous or redundant words). In considering whether the Project will unduly interfere with the orderly development of the region, the Subcommittee must first determine whether such interference impacts the entire region, as opposed to a limited number of residences. Thereafter, the Subcommittee must consider whether the degree of such interference is so excessive that it warrants mitigation or denial of the Certificate.

Here, the Applicant asserts that the Project will not unduly interfere with the orderly development of the region's economy and local employment and will, in fact, have substantial positive effects upon the region's development. Ex. App. 1, at 90. In support, the Applicant introduces a study of economic impact of the Project conducted by Professor Ross Gittell of the University of New Hampshire Whittemore School of Business and Economics. Ex. App. 1, at 88; Ex. App. 1, App. 36, 37. According to Professor Gittell, the Project will have an estimated regional economic benefit of approximately $81.5 million over 20 years and will provide approximately $24.5 million in local area benefits during the construction. Ex. App. 1, at 88; Ex. App. 1, Appx. 36. Professor Gittell further estimates that a total of 229 local jobs will be created as a result of the construction of the Project. Ex. App. 1, at 89; Ex. App. 4, Appx. 36.

The Applicant also asserts that the Project will not adversely affect the real estate of the region. Ex. App. 1, at 88. In support of its conclusion the Applicant submitted "The Impact of Wind Power Projects on Residential Property Values in the United States: A Multi-Site Hedonic Analysis" as updated in 2009 by the Lawrence Berkley National Laboratory (LBNL Study). Ex. App. 4, Appx. 37. In the LBNLStudy, three different potential impacts of wind projects on property values were identified and analyzed: (i) Area Stigma[7]; (ii) Scenic Vista Stigma[8]; and (ii)

[7] Area Stigma is defined as "a concern that the general area surrounding a wind energy facility will appear more developed, which may adversely effect home values in the local community regardless of whether any individual home has a view of the wind turbines." Ex. App. 4, Appx. 37, at 69.

Nuisance Stigma[9]. Ex. App. 4, Appx. 37. The potential impacts were assessed through the application of a primary hedonic model, exploration of seven alternative hedonic models, reconstruction of repeat sales analysis, and revaluation of possible impacts on sales volumes. Ex. App. 4, Appx. 37. As a result of the analysis, it was concluded that there is no evidence of a "widespread and statistically significant" area stigma among the homes in this sample, no evidence of scenic vista stigma, and, as to nuisance stigma, the study found that the sale prices of the homes within a mile of wind turbines "are not measurably affected compared to those homes that are located more than five miles away." Ex. App. 4, Appx. 37, at 70, 73-74. Generally, the Analysis found no evidence that home prices surrounding wind facilities are "consistently, measurably, and significantly" affected by either the view of wind facilities or the distance of the turbines. App. 4, Appx. 37, at 74.

The Gittell Study and the LBNL Study were contested by the Intervenors. The Intervenors introduced the testimony of Michael S. McCann to support their position that the Project will have an unreasonable adverse effect on the value of their real estate. Generally, Mr. McCann asserts that the LBNL Study does not support the Applicant's conclusion. Ex. Buttolph 1-K, at 1. Mr. McCann submits that a thorough reading of the report shows that there are isolated areas where impacts on real estate market may occur. Ex. Buttolph 1-K, at 1. Furthermore, Mr. McCann asserts that the report demonstrates that impaired or less desirable views reflect measurably lower sale prices than homes with average or premium view. Ex. Buttolph 1-K, at 1. As a result, Mr. McCann concludes that a 25% or greater value reduction per

[8] Scenic Vista Stigma is defined as "a concern that a home may be devalued because of the view of a wind energy facility, and the potential impact of that view on an otherwise scenic vista." Ex. App. 4, Appx. 37, at 70.

[9] Nuisance Stigma is defined as "a concern that factors that may occur in close proximity to wind turbines, such as sound and shadow flicker, will have a unique adverse influence on home values." Ex. App. 4, Apps. 37, at 73.

square foot can be reasonably expected for many of the approximate 200 homes and structures located in close proximity to the turbines. Ex. Buttolph 1-K, at 2; Tr. 11/05/2010, Morning Session, at 17. Generally, based on the study of the Mendota Hills wind project's effect on the property values in Adams County, Illinois, Mr. McCann asserts that, anywhere in the United States, the 25% real estate value reduction should be expected within two miles of any wind project. Tr. 11/05/2010, Morning Session, at 39-40, 80-81; Ex. Buttolph 1-K, at 2. Therefore, Mr. McCann asserts that the Subcommittee should require the Applicant to construct the Project so far away from the occupied residences that there is no chance that the Project will have any impact on the values of this houses. Tr. 11/05/2010, Morning Session, at 19. In the alternative, Mr. McCann urges the Subcommittee to require the Applicant to mitigate the effect of the Project on local real estate market by requiring the Applicant to enter into a so-called "Property Value Guarantee Agreement" with potentially impacted owners of real estate within 2 miles of the Facility. Tr. 11/05/2010, Morning Session, at 19. Under the conditions of the "Property Value Guarantee Agreement," the Applicant would have to pay to the owners of allegedly impacted real estate the "assessed value" of this real estate if it cannot be sold within 180 days. Ex. Buttolph 33; Tr. 11/05/2010, Morning Session, at 20. Significantly, the Applicant would be required to reimburse the owner for any loss in the value of the real estate if the owner sells the real estate for the price below assessed value and the owner "believes" that such price reduction was due to the turbines' proximity. Ex. Buttolph 33, ¶11. In addition, if the owners of potentially impacted houses decide to keep their houses, but the value of the houses decrease after the construction of the Project, the Applicant will be required to compensate such owners and pay them the difference in the values. Tr. 11/05/2010, Morning Session, at 94-95.

Based on Mr. McCann's analysis and recommendation, the Intervenors request the Subcommittee to either deny the Certificate or adopt a "Property Value Guarantee" and to provide a proper notification to the owners within two miles of the Project of the availability of the option to enter into agreement with the Applicant under the Property Value Guarantee as conditions to the Certificate. See, Final Brief of Intervenor Group Buttolph/Lewis dated April 1, 2011. The Town of Plymouth supports the Intervenors' position and requested the Subcommittee to condition the Certificate upon the Property Value Guarantee. See, Brief of the Town of Plymouth dated April 5, 2011, at 6. The Applicant objects to such request, stating that such condition would be unprecedented and unworkable. See, Applicant's Response to Conditions Proposed by Counsel for the Public and Intervenors dated April 1, 2011, at 2.

Considering the testimony and exhibits provided, it is noted that all parties agree that the Project will have some impact on the values of the homes surrounding it. The degree of such impact is, however, in dispute. The LBNL Study acknowledges that it is possible that individual or small number of homes may be negatively impacted by the construction of wind project. Ex. App. 4, Appx. 37, at 74. Mr. McCann defines the area of impact as approximately 200 homes within a 2 mile radius of the Project. Ex. Buttolph 1-K, at 2; Tr. 11/05/2010, Morning Session, at 17. The issue is, however, whether such effect will unduly impact the orderly development of the region, and not the value of individual houses.

The Intervenors did not introduce any formal scientific study or extensive analysis to support its position that the Project will adversely impact the real estate market of entire region. In addition, as admitted by Mr. McCann, he has never been on the Site and has never evaluated the properties surrounding the Project. Significantly, the "Property Value Guarantee" offered as a condition by Mr. McCann has never been used before and, based on a review of the terms of

this condition, it is unclear how it may be implemented as a practical matter, taking into consideration other factors impacting the values of real estate in the area.

The Applicant relies extensively on the LBNL Study to support its conclusion that the real estate market in the region will not be impacted by the Project but the authors of the study were not made available by the Applicant to testify in front of the Subcommittee and have never been in New Hampshire. Unlike Mr. McCann's report, however, the LBNL study is based on the comprehensive analysis of thousands of sites across the country conducted by five different individuals familiar with hedonic methodologies.

Mr. McCann's opinions are not based on any specific knowledge of the Grafton County region or the real estate market in Grafton County. Even assuming, *arguendo,* that the Project will have the effect suggested by Mr. McCann on the value of the homes located in close proximity of the Facility, we cannot conclude that such impact will unduly interfere with the orderly development of the entire region. Thus, while the Intervenors introduced evidence that the Project may have some impact on the value of some residences in the region, they did not introduce evidence showing that the project will unduly interfere with the orderly development of the region. Hence, the Subcommittee finds that it would be inappropriate to consider and apply any blanket mitigation measures, including the Property Value Guarantee, when it has not been demonstrated that the Project will unduly interfere with the orderly development of the region. As a result, after considering the testimony and exhibits offered by the parties, the Subcommittee finds that, while the Project may affect certain real estate values, it will not unduly interfere with the orderly development of the region. Furthermore, the Subcommittee finds that the economy will not be affected in any way that would unduly interfere with the orderly development of the region.

c. Land Use and Tourism

The Applicant asserts that the Project will not have an unreasonable adverse impact on the land use and tourism of the region. Ex. App. 1, at 87-88. Specifically, the Applicant asserts that such activities as commercial timber harvesting, outdoor recreation, and the use of non-motorized and motorized trails conducted and located within the Site will not be impacted by the Project. Ex. App. 1, at 87-88. As to tourism, the Applicant asserts that there is "no empirical basis for a significant adjustment – positive or negative – to likely tourism visitation or expenditures as a result of the Groton Wind Project." Ex. App. 1, at 89. The Applicant's conclusion about the impact of the Project on the tourism in the area is largely based upon its experience with its other New Hampshire wind project, Lempster Wind. Ex. App. 1, at 89.

As to the interconnection line and step-up voltage facility, the Applicant asserts the impact will be "consistent" with the orderly development of the region. Ex. App. 62, at 5-6. For example, according to the Applicant, the interconnection line running along Route 25 will be located in existing rights-of–way, where poles and wires have been located for many years. Ex. App. 62, at 5-6. The Applicant believes that the usage of currently existing poles may have a positive impact on the region since NHEC will design and construct the line according to NHEC standards and codes and will replace out-of-date and non-compliant poles and wires. Ex. App. 62, at 5-6. As to the impact of the step-up facility on the orderly development of the region, the Applicant asserts that the facilities will be sited in an area zoned for commercial usage and used as a right-of-way for the 115 kV Northeast Utilities transmission line. Ex. App. 62, at 3. The Applicant also asserts that the step-up facility will not have an adverse impact on the orderly development of the region because it will be located in an area with other commercial and industrial facilities and will be set back from Route 175. Ex. App. 62, at 3.

The parties did not present any credible evidence indicating that the siting, construction and operation of the transmission line and step-up transfer station would interfere with the orderly development of the region.

Intervenor, Cheryl Lewis, disagrees with the Applicant's statement that the turbines will not have an adverse impact on the tourism in the area. Ex. Buttolph 25. According to Ms. Lewis, the tourists and visitors who frequent her campground are attracted to the natural, wild, and uninhabited environment of the region. Ex. Buttolph 25. She asserts that many of the tourists and visitors to the area are outdoorsmen and women engaged in rock climbing and fishing. See, Letter from Ms. Lewis dated June 3, 2010. She believes that the visibility of the wind turbines and the noise generated by these turbines may make the region unattractive to these tourists. Ex. Buttolph 25. The noise impacts associated with the Project are addressed in Section C. 3.(e)(iii) and the visual impact of the Project on the Campground is addressed in Section C. 2. (c) , below.

The proposed site is currently used for timber harvesting. In addition, as stated above, the New Hampshire Timberland Owners Association supports the Applicant's position that the Project will not adversely affect the land use and tourism in the region and asserts that the Project would "complement the property's forest management activities and recreational uses." See, Letter from the New Hampshire Timberland Owners Association dated December 6, 2010. The Subcommittee did not receive any evidence demonstrating that the tourism in the region will be impacted by the Project. Ms. Lewis testified about her belief that the Project will have an adverse effect on her Campground. Her concerns regarding noise that may be heard at her campground are addressed below but those concerns do not support a finding that the region's tourism, overall, will suffer any impact if the Project is constructed. The Subcommittee finds

that the Project will not affect land use and tourism in a manner or degree that would unduly interfere with the orderly development of the region.

d. Decommissioning

Modern wind turbine generators typically have a life expectancy of 20 to 25 years. Typically, older wind projects are replaced or re-powered by upgrading older equipment with more efficient turbines. However, if turbines become non-operational and there is no expectation of return to operation, they should be decommissioned. Decommissioning ordinarily involves dismantling and removing the turbines from the project sites. Such activity may conceivably impact the orderly development of the region, the natural environment, and water quality. Therefore, it is important that the Applicant demonstrate a well designed decommissioning plan addressing the issues of preservation of the orderly development, natural environment, and water of the region.

The Applicant does not have any first-hand experience with the decommissioning of wind farms. Tr. 11/02/2010, Morning Session, at 73. However, the Applicant asserts that, if required, it will apply the following procedure to decommission the turbines: (1) provide a decommissioning schedule to Town of Groton; (2) mobilize crane(s) to the Site; (3) dismantle and remove the rotor, nacelle and towers and transport the entire wind turbine generator off Site; (4) remove the concrete foundations; (5) cut off all the metal and cable below 18 inches at each foundation site; (6) backfill the holes with the soil; (7) remove switchyard equipment, concrete foundations, and gravel and fencing from the Site; and (8) acquire approvals for transport of oversized/overweight loads from the Site. Ex. App. 1, at 33-34.

The issue of decommissioning was also addressed in the Agreement between the Applicant and the Town of Groton. Ex. App. 32, §14. Under §14 of the Agreement, the

Applicant is required to "submit a detailed site-specific decommissioning estimate of costs associated with decommissioning activities to the Town before the commencement of the construction of the Project" and a decommissioning plan no less than three months before the beginning of the decommissioning. Ex. App. 32, ¶¶14.1.1-2. In addition, the Agreement requires the Applicant to complete the decommissioning of the project within twenty-four months after the end of useful life of the wind farm or any individual wind turbine. Ex. App. 32, ¶¶ 14.1.1-3. Finally, under the terms of the Agreement with the Town of Groton, the Applicant will be required to provide to the Town of Groton a Decommissioning Funding Assurance in an amount equal to the site-specific decommissioning estimate or $600,000, whichever is greater. Ex. App. 32, ¶ 14.2.2.

The Town of Groton and the Applicant have thoroughly addressed the issue of decommissioning. The Applicant clearly has the financial capacity to construct and operate the Project. Therefore, we find it unnecessary to require the Applicant to comply with completion of construction conditions similar to those required of the Granite Reliable Power project. See, Joint Application of Granite Reliable Power, LLC and Brookfield Renewable Power Inc., for Approval to Transfer Equity Interests in Granite Reliable Power, LLC under RSA Ch. 162-H (Dec. 3, 2010); Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC, Docket No. 2010-03 (issued Feb. 8, 2011).

The Subcommittee conditions the Certificate upon compliance with the terms and conditions of the Agreement with the Town of Groton. Said Agreement shall become a part of the Certificate in this docket. After considering the testimony, comments, and exhibits in this docket, the Subcommittee finds, subject to the Conditions identified herein, that the Project will not unduly interfere with the orderly development of the region.

3. Adverse Effects

Under New Hampshire law, the Committee may issue the Certificate if it finds that the Facility will not have an unreasonable adverse effect on: (1) aesthetics; (2) historic sites; (3) air and water quality; (4) the natural environment; and (5) public health and safety. See, RSA 162-H:16, IV (c).

a. Aesthetics

The Subcommittee must consider whether the Facility will have an unreasonable adverse impact on aesthetics. See, RSA 162-H:16, IV(c). The Applicant addressed aesthetics by reference to a visual impact study for three major components of the Project: (1) the turbines; (2) the transmission lines; and (3) the voltage step-up facility.

i. Turbines

As proposed, the Facility will consist of twenty-four wind turbines with approximate heights of 399 feet. Ex. App. 1, at 17-18, 21. The Applicant's study addressed three major effects of the turbines on the aesthetics of the region: (1) the effect of the turbines during the day; (2) shadow flicker effect; and (3) the effect of the turbines' safety lighting. Ex. App. 1, at 59-64.

The visual effect of the turbines during the day time was addressed by the Applicant through a Visual Impact Assessment ("VIA"). Ex. App. 3, Appx. 24. The VIA included visual simulations demonstrating the visibility of the Project from 11 view points within a 10-mile radius of the proposed turbines. Ex. App. 3, Appx. 24.

The VIA demonstrated that the Project will likely be visible from a small portion of the area within a 10-mile radius of the proposed turbines. Ex. App. 3, Appx. 24. According to the VIA, the views of the Site will be largely restricted to areas of open road corridors, agricultural fields, water bodies, areas of exposed rock, and the cleared yards of some rural homes. Ex. App.

3, Appx. 24. The VIA determined that the turbines would be visible from 49.4% of the area of potential effect without considering the effect of vegetation screening. Ex. App. 3, Appx. 24. The potential visibility within the area of potential effect is reduced to 4% when the screening effect of the vegetation is taken into consideration.[10] Ex. App. 3, Appx. 24.

Altogether, the Applicant asserts that the visual impacts of the Project will be mitigated because the Project will be located in a remote forested area and the turbines will be white and have a uniform design, speed, height, and rotor diameter. In addition, the Applicant asserts that the towers will include no exterior ladders or catwalks, new road construction will be minimized by utilizing existing roads whenever possible, forest clearing along access roads and at turbine sites will be minimized to the extent practicable, and the placement of advertising devices on the turbines will be prohibited. The proposed switchyard and the operation and maintenance facility will be located on a lightly used private road. Ex. App. 1, at 62.

The Intervenors and Counsel for the Public dispute the Applicant's claim that the Project will have a minimal impact on aesthetics. Specifically, the exhibits offered by the Counsel for the Public demonstrate that approximately 19 to 24 turbines will likely be visible from the surface of Loon Lake. In addition, a significant part of the northern portion of Loon Lake will be exposed to the turbines. Ex. PC 12-13. The Applicant did not analyze the visibility of the turbines from Loon Lake and did not provide the simulations of the visibility of the turbines from Loon Lake. Ex. PC 12-13; Tr. 11/01/2010, Afternoon Session, at 80-82. In addition, Ms. Lewis asserts that the Project will have an unreasonable adverse impact on the aesthetics of her

[10] The Subcommittee notes that the VIA's cross-sections contained an error by stating that the turbines will be 300 feet high when in fact the turbines will be 399 feet high. App. 3, Appx. 24, Figure 9; Tr., 11/01/2010, Afternoon Session, at 60. The Applicant, however, addressed this inconsistency by providing an amended cross-section sheet for Subcommittee's review. Tr., 11/01/2010, Afternoon Session, at 64, 70. Ex. App. 37.

campground because the turbines will be visible. Ex. Buttolph 25. The Applicant's VIA, Applicant Ex. 11, demonstrates that approximately 7 to 12 turbines may be visible from the beach area of the Campground, if vegetation screening is not considered. Ex. App. 11. According to the Applicant, none of the turbines will be visible, if vegetation is taken into consideration. Ex. App. 11. The Intervenors' position was supported by the Town of Plymouth. The Town of Plymouth also claimed that the turbines may have adverse effects on the aesthetics of the region and that the Project will have a negative effect on Plymouth's "character and scenic beauty." See, Letter from the Plymouth Board of Selectmen dated December 6, 2010. However, the Town of Plymouth did not present any evidence to support this claim.

Ultimately, only one scientific analysis addressed the visual effect of the turbines. Although the Intervenors and Counsel for the Public dispute the conclusion of this study, none of the parties introduced any evidence demonstrating that the VIA is inaccurate. The VIA did contain an initial error and failed to specifically address the impact of the turbines on Loon Lake. However, the error pertaining to the turbine height was corrected by the Applicant's expert, John D. Hecklau. In addition, we believe that it would be inappropriate to require an applicant to present a visual impact assessment that addressed the visual impact of a project from every possible point in the area of potential effect. Therefore, we accept the conclusions in the VIA and find that the turbines will not have an unreasonable adverse effect on the aesthetics of the region.

A common aesthetic concern with wind turbines is "shadow flicker". Shadow flicker can occur when the revolving rotors of a wind turbine cast flickering shadows across the landscape. The Applicant presented a computerized study of the Project's shadow flicker using WindPRO 2.6 software. Ex. App. 1, at 62; Ex. App. 1, Appx. 25. The shadow flicker analysis concluded

that out of the 207 structures identified within a 1.0 mile radius, 98.5% will not experience a shadow flicker effect. Ex. App. 1, Appx. 25. 0.5% may be affected less than 1 hour per year. Ex. App. 1, Appx. 25. 1% may be affected from 1 to 3 hours per years, and none will be affected more than 3 hours per year. Ex. App. 1, Appx. 25. Therefore, the Applicant argues that the shadow flicker impact of the Project is almost non-existent. Ex. App. 1, at 63. Neither the Intervenors nor Counsel for the Public offered evidence disputing the Applicant's shadow flicker analysis.

The Applicant admits that it is possible that the synchronized pulsing of red aviation warning lights on the turbines could have an adverse effect on rural residents and vacationers. Ex. App. 1, at 64. However, the Applicant submits that such effect will be decreased by the trees screening the Project and by effect of the lights in town centers and along the highways. Ex. App. 1, at 62. In addition, in order to mitigate the effect of the Project's lights, the Applicant agrees to use lights that pulse 20 times per minute and have a vertical beam spread of 3 degrees. Ex. App. 1, at 62. Ultimately, the Applicant agreed to use the device with the lowest light pollution envelope as long as this device is in compliant with FAA requirements. Tr. 11/02/2010, Morning Session, at 91. The Intervenors, however, request the Subcommittee to apply an additional requirement that the Applicant utilize the latest technology in safety light pollution reduction consistent with FAA regulations. See, Final Brief of Intervenor Group Buttolph/Lewis/Spring Group of Intervenors dated April 1, 2011. We find that the language of the requirement is ambiguous and less protective than the condition offered by the Applicant. Additionally, we find that the FAA safety lighting performs a very important function and any adverse effect that such lighting may cause is reasonable considering the importance of aviation

safety. As a result, after considering all evidence introduced for our consideration, we find that the turbines will not have an unreasonable adverse effect on the aesthetics of the region.

ii. Distribution Lines and Voltage Step-Up Facility

The Facility will transmit electricity via a 34.5 kV line running from the Project to Route 25 and comprise approximately 37 poles, 10 to 12 of which will be located on the existing leased premises and approximately 25 of which will be located along easements on the private property. Ex. App. 61, at 2. Once the line reaches Route 25, it will travel along Route 25 using existing right of ways. The line will eventually branch from Route 25 and will connect with the proposed 34.5 kV-115 kV voltage step-up facility located in Holderness, New Hampshire. Ex. App. 62, at 2. Thereafter, the output will be transmitted to a Northeast Utilities connection by a short 115 kV line. Ex. App. 62, at 2. The step-up facility will be constructed on a five acre parcel of property that currently hosts a gravel pit and other commercial and industrial facilities. Ex. App. 62, at 3.

The Applicant conducted a visual analysis of the effect of the transmission lines and the voltage step-up facility on the region, which showed that forest vegetation will limit the visibility of the interconnection between the Project and Route 25 to a very short section of Route 25 and that, depending on the extent of clearing, a portion of the power line and the poles may be visible for less than 0.2 miles when approached from the east. Ex. App. 60, at 6. The views from the west will be limited to the area where the power line intersects with Route 25. Ex. App. 60, at 6. In addition, the power line and/or cleared right of way will be visible from the Quincy Road area, approximately 0.5-1.7 miles to the northeast. Ex. App. 60, at 7. The step-up transformer station will only be visible at one location along Route 175 and it will be partially screened from the higher elevation residences to the east. Ex. App. 60, at 7. No party disputed the Applicant's

conclusion that the transmission lines will not have unreasonable adverse effect on the aesthetics of the region.

As to the voltage step-up facility, Counsel for the Public asserts that the Subcommittee should require the Applicant to maintain a vegetative screen around the Holderness step-up facility. See, Closing Memorandum and Proposed Conditions dated April 1, 2011, at 13. The Applicant asserts that vegetative screening would offer little to no reduction of visibility of the facility. See, Applicant's Response to Conditions Proposed by Counsel for the Public and Intervenors dated April 5, 2011, at 14. We note that the voltage step-up facility, as proposed, will be constructed in an area currently used for industrial purposes. The Facility will not change the character of the site, which has an industrial appearance. Because the step-up transformer station will not measurably change the character of the site, the mitigation measure suggested by Counsel for the Public would provide no discernible benefit.

The Town of Holderness has a "dark skies" ordinance designed to assure the minimization of light pollution in the evening and nighttime sky and expressed concerns pertaining to the impact of the voltage step-up facilities' external lighting. See, Pre-Filed Testimony of Walter Johnson (March 9, 2011). At the same time, the Applicant must construct and operate the facility (including the step–up facility in Holderness) in conformity with fire, life safety and electrical codes. See, Closing Memorandum and Proposed Conditions dated April 1, 2011, at 13. The building codes governing the step-up facility may conceivably require some nighttime lighting that is not consistent with the Holderness ordinance. Thus, the Applicant and the Town of Holderness reached an agreement that the lighting at the step-up transformer facility would comply with the Town's "dark skies" ordinance to the extent that the "dark skies" ordinance is consistent with fire, life safety and building codes. See, Tr. 03/22/2011, Morning

Session, at 27. The Subcommittee finds the agreement to be an acceptable way to satisfy the concerns of the Town of Holderness and to ensure that the step-up facility is operated safely. Therefore, the Certificate will require the Applicant to comply with the Town of Holderness' "dark sky" ordinance, at the step-up transformer facility, to the extent it is not contrary to applicable life safety codes, building codes or fire codes .

b. Historic Sites

In order to issue a Certificate to the Applicant, the Subcommittee must decide that the Project will not have an unreasonable adverse effect on historic sites in the region. See, RSA 162-H:16, IV(c). In this case, the proposed Project is subject to a review process governed by §106 of the Historic Preservation Act of 1996. The lead federal agency for §106 review in this case is the USACE. However the USACE is required to act in consultation with the New Hampshire Division of Historic Resources (DHR). See, 16 U.S.C. 470 *et. seq.*

As a general matter, review of the impact on historic resources encompasses two separate types of resources: (1) archeological resources; and (2) historic structures. Historic review generally involves three major stages: (1) authentication; (2) evaluation; and (3) mitigation. However, the evaluation and mitigation stages are not triggered if the study demonstrates that the Site does not contain any archeological resource or there are no historic structures in the vicinity of the site.

To date, the Applicant has completed a Phase IA and Phase IB archeological survey. The Applicant introduced the testimony of Dr. Hope Luhman who, based on the Phase IA and Phase IB archeological surveys, concluded that the Project will not pose any significant impacts to any archeological resources and that no cultural resource will be impacted. Ex. App. 5, Appx. 50, at 7; Ex. App. 51, at 2. Dr. Luhman also asserted that the transmission line and the voltage step-up

facility will not have an unreasonable adverse impact on archeological resources. Additional subsurface testing in these areas did not disclose any archaeological deposits. Ex. App. 51 at 2; Ex. App. 52, at 2. Dr. Luhman's testimony regarding the archeological surveys is uncontested. Therefore, we find that the Facility will not have unreasonable adverse effect on archeological resources.

The Project's impact on above ground historic resources was a major source of contention in these proceedings. Generally, as discussed above, the Applicant is first required to identify the historic structures that may be impacted by the Project. The identification phase of the process is concluded with the submission of the Project Area Form (PAF) to DHR. The Applicant submitted a Project Area Form to DHR in July, 2010 and an Amended Project Area Form in October, 2010. Ex. App. 38, 39. On October 28, 2010, the New Hampshire Division of Historical Resources informed the Subcommittee that the Applicant's Project Area Form and Amended Project Area Form submitted in July and October, 2010 were deficient and that DHR was unable to determine the effect of the Project on the historic sites without a "well-researched document to act as a solid basis of information." Ex. App. 38, 39; Buttolph 29. Two and a half months later, on January 11, 2011, the Applicant submitted a second Amended Project Area Form. Consistent with DHR guidance, the area of potential effect (APE) covered was within a three mile radius of the proposed turbines. Ex. App. 71. On February 1, 2011, DHR informed the Subcommittee that the PAF filed on January 11, 2011, "succinctly summarize[d] the themes of development in the project area, outline[d] expected resource types, and la[id] a solid foundation for future survey needs." Ex. App. 51, at 1.

Counsel for the Public, however, asserts that the Applicant did not meet its burden and did not demonstrate that the Project will not have an unreasonable adverse effect on historic sites

because there is, as yet, insufficient data to determine whether any impact will be adverse. See, Closing Memorandum and Proposed Conditions dated Apr. 1, 2011, at 8. Therefore, Counsel for the Public urges the Subcommittee to condition the Certificate and require the Applicant to submit for the Subcommittee's approval any proposal for mitigation of adverse effects on the historic sites of the region. See, Closing Memorandum and Proposed Conditions dated Apr. 1, 2011, at 10.

The Subcommittee recognizes that the identification and evaluation of historic resources in compliance with §106 and the requirements of DHR is an iterative process that will continue beyond the time frames set forth in RSA 162-H:6-a. The comprehensive identification and evaluation process that accompanies §106 review provides assurance that any adverse effect on historic sites will not be unreasonable. However, certain conditions are necessary to ensure that construction and ultimate operation of the proposed Facility does not cause an unreasonable adverse impact on historic sites. In previous cases it has been determined that continual consultation with the DHR throughout the construction and operation of a facility will assure that impacts on historic sites will not be unreasonably adverse. In the Application of Lempster Wind, LLC, the Applicant was required to adhere to the following conditions:

> 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 archeological survey and provide copies to DHR and the Committee; and, 3) undertake a Phase 1-b archeological survey in all archaeological sensitive areas and file the reports of the survey with DHR and the Committee. Additionally, in the event that new information or evidence of a historic site, or other cultural resources, are found within the project site, the Applicant shall immediately report said findings to the DHR and the Committee.

See, Decision Issuing Certificate of Site and Facility with Condition, Application of Lempster Wind, LLC, Docket No. 2006-01, 29 (issued June 28, 2007).

The Applicant has completed the archeological surveys and, therefore, conditions pertaining to such surveys are inapplicable. Additionally, the Applicant points out that §106 review procedures will continue and that it will be required to mitigate the effect of the Project on the historic sites in the area in accordance with the results of such review. Ex. App. 51, at 3. Therefore, the Applicant states that inclusion of an additional condition in the Certificate is unnecessary. We note, however, that the purpose of the §106 review is slightly different than the purpose for which the Subcommittee applies its standard. The §106 process is designed to preserve the historic resources, while RSA 162-H:16, IV(c) requires the Subcommittee to ensure that the Project will not have unreasonable adverse effect on historic resources. See, 16 U.S.C. 470 *et. seq.*; RSA 162-H:16, IV(c). In addition, federal involvement in the §106 process is not guaranteed for the life of the project.[11] Therefore, the Subcommittee finds that the effect of the Project on the historic sites is best addressed by maintaining a continuing role for the DHR by requiring conditions similar to those that we required in the Lempster Wind, LLC matter. The following conditions will be required as part of the Certificate to be granted in this docket:

> The Applicant shall 1) continue to consult with the Division of Historical Resources with respect to the impact of the project on historic resources; and, 2) comply with all agreements and memos of understanding with the DHR; and, 3) in the event that new information or evidence of a historic site or other cultural resource is found in the project area the Applicant shall immediately report said findings to the DHR and the Committee. The Subcommittee hereby delegates the authority to monitor the project and for compliance with this condition of the Certificate and with all laws and regulations pertaining to historic resources to the Division of Historic Resources. The DHR is hereby delegated the authority to specify the use of any technique, methodology, practice or procedure as may be necessary to effectuate this condition of the

[11] The Subcommittee recognizes that a change in design for the Project or a change in administrative determination by the USACE could eliminate federal review of the Project under §106. In such a circumstance, and in the absence of a condition to the Certificate, the DHR may find itself to be without a practical method to enforce agreements and memos of understanding that have been executed to date through that process.

> Certificate, however, any action to enforce the condition must be brought before the Site Evaluation Committee.

See, RSA 162-H: III, III-a.

Furthermore, the Subcommittee is cognizant that the excavation conducted for the purposes of the construction of the Facility may reveal some archeological deposits or resources. In the event of such discovery, the Applicant shall notify DHR, which in turn shall determine whether there is a need for evaluation, studies or mitigation. In addition, the Applicant shall notify the DHR of any change in the construction plans of the Facility and of any new community concerns for any historic property affected by the Site.

The Intervenors requested two conditions pertaining to historic sites. First, they request the Applicant be required to hire a consultant to handle all aspects of the nomination process of any building eligible for the National Register and to pay for that process. The Intervenors' second request is for the Applicant to pay $75,000.00 to the Town of Rumney to be used for renovations of Rumney Historic Society. The Subcommittee interprets the Intervenors' proposed conditions as requests for mitigation. However, it is premature to identify what, if any, mitigation measures will be appropriate. Mitigation is a component of the ongoing §106 review and of the processes used by DHR. Consistent with the above written conditions, the Subcommittee will, at least at this point, leave mitigation requirements, if any, to those processes.

Having considered the Application, the testimony, the exhibits and the arguments of all parties, the Subcommittee finds that, subject to the conditions set forth herein, the proposed Facility will not have an unreasonable adverse effect on historic sites.

c. Air and Water Quality

The Subcommittee may issue a Certificate if it concludes that the Facility will not have an unreasonable adverse effect on air and water quality. See, RSA 162-H:16, IV(c). The Project will not create air emissions and, therefore, will not have an unreasonable adverse effect on air quality. The Applicant asserts that the Project will not have an unreasonable adverse effect on water quality based on comprehensive construction planning and mitigation efforts to minimize the effects of the Project on the water quality. Ex. App. 1, at 67-73. Specifically, the Applicant points to efforts undertaken for purposes of state permits and indentifies three major impacts related to construction of the Project: (1) impact on surface water; (2) soil erosion and sedimentation; and (3) impact on wetlands. Ex. App. 1, at 67-73.

Each of these is addressed in the permits issued by the Department of Environmental Services discussed above. As a result of such review, DES identified the Conditions with which the Applicant is expected to comply to ensure that the Site will not have unreasonable adverse effect on water quality. Ex. App. 5, Appx. 51. We have already adopted the conditions contained in those permits. Irrespective of the water quality conditions contained in the permits issued by the Department of Environmental Services, which will be conditions of the Certificate, the Intervenors and Counsel for the Public raise several water quality concerns. These concerns include: (1) the effect of construction blasting on the aquifer in the region; (2) the effect of construction blasting on local drinking wells; (3) the leakage of transformer oil into streams and groundwater; and (4) the effect of the transmission line on natural features affecting water quality.

The Intervenors express concerns that blasting required for the construction of the Project may impact the aquifer located under Groton Hollow Road and may change the subsurface water

tables. These concerns, however, are amply addressed in the Alteration of Terrain Permit, which is adopted as part of the Certificate. The Alteration of Terrain Permit requires the Applicant to comply with the following Best Management Procedures for blasting in order to reduce the potential for groundwater contamination:

> a) Explosive products shall be selected that are appropriate for site conditions and safe blast execution.
>
> b) Explosive products shall be selected that have the appropriate water resistance for the site conditions present to minimize the potential for hazardous effect of the product upon groundwater.

Ex. App. 5, Appx. 51, ¶ 22.

Furthermore, the Applicant is required to identify drinking water wells located within 2000 feet of the proposed blasting activities and to develop and implement a groundwater quality sampling program to monitor for nitrate and nitrite either in the drinking water supply wells or in other wells that are representative of the drinking water supply wells in the area. Ex. App. 5, Appx. 51, ¶ 21. The Intervenors, however, request that the Applicant test wells within 3000 feet of the blasting area. See, Final Brief of Intervenor Group Buttolph/Lewis/Spring Group of Intervenors dated April 1, 2011. Testing within 2000 feet of the blasting area is an industry standard and the Intervenors did not present persuasive evidence for extending the testing zone to 3000 feet. Finally, we note that DES has the authority to address the Intervenors concerns, if needed, and expand its requirement to test the wells within 3000 feet. See, Ex. App. 5, Appx 51, ¶21. Therefore, the Intervenors request to require the Applicant to test wells within 3000 feet of blasting is denied.

The Intervenors also express concerns about contamination of streams and groundwater by transformer oil. These concerns were addressed in Paragraph 14 of the Alteration of Terrain

Permit. DES specifically requires the Applicant to prepare, submit, and implement a Spill Prevention, Control, and Countermeasures Plan in accordance with federal regulations (40 CFR part 12). Ex. App. 5, Appx. 51, ¶ 14.

Counsel for the Public also raises concerns regarding water quality stemming from construction of the overhead power line that connects the project to the transmission lines on Route 25. Counsel for the Public asks the Committee to impose a condition requiring that construction of the power line should "avoid any natural features" identified in the VHB report concerning the alternate route for interconnection to Route 25. See, Closing Memorandum and Proposed Conditions, dated April 1, 2011, at p. 14. We assume that Counsel for the Public's reference to natural features concerns wetlands and vernal pools.

The Applicant acknowledges that the overhead power line connecting the project to Route 25 cannot completely avoid crossing wetlands and streams. Ex. App. 64 at 4. The power line will require a 35-foot wide corridor that may affect some vernal pools and wetlands. However, the Applicant asserts that there will be no unreasonable adverse effect on wetlands and water quality because the impact of the construction of the power line will be minimal, temporary, and may be able to be avoided altogether. Ex. App. 64 at 5. In addition, the Applicant points out that construction of the step up transformer facility will not have an unreasonable adverse impact on wetlands, vernal pools or streams, or water quality if constructed according to best management practices. Ex. App. 65 at 3. The Subcommittee finds that the Applicant has adequately investigated and properly determined that the construction of the power line to Route 25 and the construction of the step-up transformer facility in Holderness will not have an unreasonable adverse impact on water quality. The condition requested by Counsel for

the Public is ambiguous and fails to explain why it is necessary to avoid all natural features in order to preserve water quality.

Having considered the testimony of all witnesses, exhibits, and taking into account the comprehensive process employed by the Department of Environmental Services in its consideration and issuance of a Wetlands Permit and Alteration of Terrain Permit, the Subcommittee finds that the Project will not have an unreasonable adverse effect on air or water quality. Each of the aforementioned permits shall become a condition of Certificate in this docket. The Department of Environmental Services is hereby delegated the authority to monitor the project and its compliance with conditions of the Certificate and with all laws and regulations pertaining to the permits that it has issued. The Department of Environmental Services is hereby delegated the authority to specify the use of any technique, methodology, practice or procedure as may be necessary to effectuate the provisions of this Certificate, however, any action to enforce the provisions of the Certificate must be brought before the Site Evaluation Committee. See, RSA 162-H: III, III-a.

d. Natural Environment

The Subcommittee must consider whether the Facility will have unreasonable adverse impact on the natural environment. See, RSA 162-H:16, IV (c).

i. Rare Plants and Exemplary Natural Communities

The Applicant asserts that the construction and operation of the Facility will not have an adverse impact on rare plants or exemplary natural communities. Specifically, as to the impact on fauna, the Applicant asserts that the Site consists of 4,165 acres of upland and approximately 39 acres of wetlands with five different forest communities: Hemlock-Hardwood-Pine Forest, Northern Hardwood-Conifer Forest, Lowland Spruce-Fir Forest, Wet Meadow-Scrub Wetland,

Rocky Ridge-Talus Slopes, and other non-habitat community. The forest communities are heavily logged. Ex. App. 1, at 73-74; Tr. 11/01/2010, Afternoon Session, at 53-54. According to the Applicant, the Project will not have an unreasonable adverse effect on the identified communities. The New Hampshire Heritage Bureau (NHHB) agrees with the Applicant and asserts that "it is unlikely that the proposed wind facility will impact rare plants species or exemplary natural communities." NHHB also notes that there are no known records of threatened, endangered or species of concern within one-mile radius of the interconnection line study corridor. Ex. App. 5, Appx. 45; App. 45.

ii. Wildlife

As to the impact of the Project on wildlife, not including avian species, the Applicant asserts that the presence of wood turtles, native brook trout, and a deer wintering yard was recorded at the Site. Ex. App. 1, at 78-80. However, according to the Applicant, the Project will not have an unreasonable adverse effect on these forms of wildlife. Ex. App. 1, at 78-80.

There was little dispute regarding the effect of the Project on plants, exemplary natural communities and wildlife (other than avian species) during the proceedings. The Subcommittee finds that construction and operation of the Facility will not have an unreasonable adverse effect on plants, exemplary natural communities or wildlife.

iii. Avian Species – Birds and Bats

The post-construction impact of the Project on birds and bats was an issue of contention amongst the parties. The Applicant, as part of the Application and the Supplement to the Application, submitted the following studies conducted in or related to the project area:

> 2006 Summer and Fall Initial Wildlife Surveys at Tenney Mountain prepared by Woodlot Alternatives, Inc. (This report includes four initial peregrine falcon surveys and an initial bat detector survey.) *See,* Ex. App. 4, Appx. 29

2008 Phase I Avian Risk Assessment prepared by Curry & Kerlinger, LLC.
See, Ex. App. 5, Appx. 46

2009 Spring, Summer, Fall Avian and Bat Survey prepared by Stantec. (This report includes a breeding bird survey conducted in June, 2009; a raptor migration survey conducted during the Spring of 2009; an acoustic bat survey conducted in the fall of 2009; and, a raptor migration survey conducted in the fall of 2009.)

See, Ex. App. 4, Appx. 32

2009 Summer / Early Fall Peregrine Falcon Use Surveys prepared by Stantec
See, Ex. App. 4, Appx. 33

2010 Spring and Summer Acoustic Bat Survey report prepared by Stantec
See, Ex. App. 5, Appx. 48

The Applicant also submitted a Proposed Work Plan for Avian and Bat Studies, *see*, Ex. App. 3, Appx. 17, and its corporate-wide Avian and Bat Protection Plan, *see*, Ex. App. 3, Appx. 16. In addition, the Applicant submitted copies of its early correspondence with the United States Fish and Wildlife Service (USFW) and the New Hampshire Fish and Game Department (NHF&G) pertaining to plans to study the avian species and bat populations in the project area. See, Ex. App. 3, Appx. 18.

On November 5, 2010, the Subcommittee received a letter from the New Hampshire Fish and Game Department. See, Ex. App. 50. NHF&G recommended that the Applicant continue to perform acoustic bat surveys during construction and after construction during the operational phase of the facility. NHF&G also recommended post-construction mortality surveys for birds and bats. NHF&G recommended that the bat mortality surveys be conducted over multiple years and during times when the turbines are operational and bats are actively foraging. NHF&G also recommended that the Applicant implement post-construction bird mortality studies over a period of three years with a full report produced at the end of each complete year. See, App. Ex. 50.

On March 21, 2011, the Subcommittee received a second letter from the New Hampshire Fish and the Game Department advising the Subcommittee that it had "agreed to the post-construction studies outlined in the (Applicant's) Avian and Bat Protection Plan (ABPP) protocols". NHF&G pointed to the highlights of its agreement with the Applicant, specifying that the Applicant would "commit to bat acoustic detection monitoring during the first year post-construction and will attempt to correlate the activity data with post-construction fatality numbers." The letter also reported that the Applicant had agreed to baseline and operational monitoring through the life of the project and to provide yearly mortality reports to NHF&G. The letter did not explain why the Department had changed its recommendations for post-construction studies.

In addition to the environmental studies set forth in the Application, the Applicant presented the testimony of Adam Gravel, a wildlife biologists employed by Stantec Consulting. He opined that the Project would not have an unreasonable adverse effect on the natural environment including avian species and bats. According to Mr. Gravel, the various studies and surveys, as well as experience with other wind turbine sites in the northeast, contribute to his ultimate opinion that there is a low risk for bats and birds to be significantly affected by the Project. Mr. Gravel and other parties agreed that preconstruction studies serve a valuable function as baseline studies but that, in and of themselves, they cannot predict the actual mortality rate that will occur at any given wind turbine project. Tr. 11/03/2010, Morning Session, at 20; Tr. 11/04/2010, Morning Session, at 12; Ex. Buttolph 3, at 34. The parties agree that some post-construction studies are necessary in order to measure the actual effect of the Project on wildlife in the area. If a wind turbine project unexpectedly causes excessive mortality to wildlife, operational and mitigation measures can be taken. For instance, certain turbines

might be shut down during certain times of the year or for parts of the day. Likewise, a developer can create environmental features away from the wind turbine that are designed to draw the wildlife away from the area in which the wind turbines operate. In this docket, the parties dispute the extent of necessary post-construction studies. Therefore, the Subcommittee must decide which post-construction studies of bird and bat mortality should be required for the Facility to operate without an unreasonable adverse effect on the populations of avian species and bats.

The Applicant proposes one year of formal post-construction monitoring covering the spring and fall migration seasons, which would be conducted by a qualified third party consultant with experience conducting transect based post-construction studies at wind facilities. The consultant will utilize standardized fatality searches at turbines, and include search efficiency trials, carcass removal trials, and a habitat analysis. Ex. App. 1, at 78; Tr. 11/03/2010, Afternoon Session, p. 23; Tr. 11/04/2010, Morning Session at 17. The results of the study will be submitted to the USFW and NHF&G. Ex. App. 1, p. 78; Tr. 11/03/2010, Afternoon Session, p. 23; Tr. 11/04/2010, Morning Session p. 19. According to the Applicant, "If the first year results show higher mortality than the range of observed rates at other operational projects on forested ridge lines in the northeast, then Groton Wind will conduct a second year of post-construction monitoring with specific focus on the factors that may have influenced such results." Ex. App. 1, at 78; Ex. App. 5, Supplemental Prefiled Testimony of Adam J. Gravel, at 9; Tr. 11/04/2010, Morning Session p. 18. The Applicant submits that it will be willing to take appropriate adaptive management mortality reduction or mitigation measures developed in consultation with NHF&G if "unexpectedly high mortality or unexpected impacts to protected species or their habitats is determined by the monitoring." Ex. PC 5, p. 4, ¶16. If, at the end of

the first year, the bird and bat mortality rates are within or less than known ranges of mortality at other projects in the Northeast "then Groton Wind will implement its yearly monitoring using on-site operations personnel for the life of the project, as described in the proposed corporate avian and bat protection plan." Ex. App. 5, Supplemental Prefiled Testimony of Adam J. Gravel, at 9; *see also*, Ex. App. 1, p. 78. Under the Applicant's Avian and Bat Protection Plan, such "informal monitoring" will be conducted in accordance with and implemented by the Applicant's on-site employees according to a site-specific Wildlife Reporting and Handling System ("WRHS"). Ex. App. 3, Appx. 17, §3.1.2. Specifically, employees at the Project who find a dead bird or bat will be required to leave it in place, photograph it, and record the finding on a WRHS reporting form. Ex. App. 3, Appx. 17, §3.1.2. According to the Applicant, although such monitoring will not be comparable to the formal studies of the first year, it will guarantee that the fatalities will be recorded. Tr. 11/03/2010, Afternoon Session, p. 44. The Applicant agrees to share its records with NHF&G. Tr. 11/04/2010, Morning Session, at 27, 72. If formal mortality surveys do not demonstrate excessive mortality, then the Applicant proposes to use the less formal survey methods contained within its Avian and Bat Protection Plan for the balance of the life of the project. According to the Applicant, its post-construction mortality study plan is reasonable "given that there are no state guidelines for mortality thresholds at wind projects and because the state has little information about bird and bat population numbers that either reside or migrate through New Hampshire, or on bird or bat mortality caused by sources other than wind projects." Ex. App. 5, Supplemental Prefiled Testimony of Adam J. Gravel, at 9-10.

Counsel for the Public presented the testimony of Trevor Lloyd-Evans, Senior Staff Biologist at the Manomet Center for Conservation Sciences. Mr. Lloyd-Evans asserts that at least three years of formal studies should be conducted by the Applicant. He recommends that

the results be reviewed on an annual basis by USFW or NHF&G with mitigation measures to be developed and applied based on the collected data. Tr. 11/04/2010, Afternoon Session, at 19-20, 73-74. According to Mr. Lloyd-Evans, three-years of formal mortality studies are more valuable because biological data varies from year to year depending on different circumstances; a one-year study may not adequately reflect shifts in biological composition. Tr. 11/04/2010, Afternoon Session, at 56-57. Mr. Lloyd-Evans agrees, however, that the informal studies offered by the Applicant are helpful in tracing the mortality on the Site and should be conducted through the life of the Project. Tr. 11/04/2010, Afternoon Session, at 21-22.

Counsel for the Public also introduced two newly published draft policy guidance manuals from USFWS. On February 18, 2011, USFW published Draft Land-Based Wind Energy Guidelines. Ex. PC 21, 22. Also, on February 18, 2011, USFW published a Draft Eagle Conservation Plan Guidance. Ex. PC 23, 24. Counsel for the Public argues that pursuant to the newly published USFW draft documents, the site qualifies as a high risk site with a low potential to avoid or mitigate impacts. Counsel for the Public also argues that the USFW draft guidance requires uniform and scientifically reliable data for making quantifiable and defendable risk assessments. Ex. PC 24, at 21-22; see Closing Memorandum and Proposed Conditions dated Apr. 1, 2011, p. 6. Counsel for the Public asserts that, as applied to at least one species detected on the site, the bald eagle, the Applicant's position is at odds with the USFW draft guidelines. Counsel for the Public requests that the Subcommittee impose the same post-construction bird and bat mortality study conditions that were imposed upon the Granite Reliable wind project located in Coos County. See, Counsel for the Public's Closing Memorandum and Proposed Conditions dated Apr. 1, 2011, p. 6. In the Granite Reliable docket, the applicant was required to:

> implement a post-construction bird and bat mortality study designed by its consultants and reviewed and approved by NHF&G. The study should be conducted for three consecutive years and a full report and analysis should be produced after each complete year. In addition, the Applicant . . . [is] . . . required to conduct post-construction breeding bird surveys that replicate the pre-construction surveys for the project site. NHF&G shall review and approve the protocols for said studies. The post construction studies must occur one year, three years, and five years after construction has been completed. If the Applicant and NHF&G cannot achieve consensus on such studies then either party may petition the Committee for a determination.

See, Decision Granting Certificate of Site and Facility with Conditions, Application of Granite Reliable Power, LLC, 2008-04, p. 55 (July 15, 2009). It should be noted that the Applicant disagrees with large portions of the USFW draft guidance documents. The Applicant points out that the documents are in draft format and published for public comment. The Applicant and its consultants intend to file comments on the draft documents with the USFW.

One of the Subcommittee's core functions is to determine whether the Project will have an unreasonable adverse effect of the natural environment. See, RSA 162-H: 16, IV (c). It follows that the Subcommittee must determine two things: (1) whether the Project has an adverse effect on the natural environment of the region; and (2) the degree of such an adverse effect. In cases where the project may have an unreasonable adverse effect, the Subcommittee may place conditions on the project that would limit its adverse effects. Post-construction studies assist the Subcommittee in assuring that a facility will not create an unreasonable adverse effect on the environment. If an unreasonable adverse impact does occur the studies should inform the Applicant, state agencies, and the Subcommittee in determining what mitigation may be required to avoid such effects. Ultimately, any post-construction study is helpful to the Subcommittee only if it demonstrates the effect of the Project on natural environment of the region and helps to determine whether such effect is adverse and unreasonable.

The Subcommittee finds, in this case, that one or even two years of formal scientific post-construction study is insufficient to properly gauge the effect of the Project on avian species from one year to the next because bird and bat populations may vary from year to year due to the weather conditions, environmental conditions, and other factors. Studies conducted in a single year or even for two years will have difficulty in identifying the cause of such population shifts. Therefore, a minimum of three years of post-construction studies are required in order to accurately reflect the impact of the Project on the shifting composition of bat and bird populations in the region.

The approach contained in the Applicant's ABPP has merit but, we disagree with the Applicant that informal recording of casualties over the life of the Project may effectively substitute for several years of formal studies. A non-scientific recording of fatalities, although helpful, does not reach the level of credibility required for a proper assessment of the impact of the Project on the natural environment of the region. In addition, the issue is not merely how many birds or bats have been killed by the Facility, but what effect the Project has on the bat and bird populations in the region. As a result, even a scientific evaluation of fatalities will not assist with the determination of the degree of impact in the absence of data showing how the natural environment was impacted. Therefore, in order to establish both the effect and the magnitude of the effect of the Project on birds and bats in the region, we require studies that (i) determine the existing population of birds and bats (population studies); and, (ii) compare the mortality rates to the population (mortality studies).

The Applicant suggests that post construction population and mortality studies are unnecessary because the degree of the impact of the Facility may be established by comparisons with mortality rates from other wind projects in northeast. The Applicant's argument fails

because each site has its own unique geographic, biological and environmental features. We have no evidence to establish that there is environmental congruity between the Groton site and other wind turbine sites in the northeast.

As a result, we find that both post construction population and mortality studies are necessary to assure that the project does not cause an unreasonable adverse effect on bats and birds. Such studies are necessary to assess the impact of the Project after construction and to determine what mitigation measures should be undertaken in the event that the mortality rates are excessive. Having considered the testimony, the exhibits and the arguments of the parties, the Subcommittee finds that the Facility will not have an unreasonable adverse effect on avian species and bats so long as sufficient post construction population and mortality studies are conducted so that appropriate mitigation measures may, if necessary, be undertaken by the Applicant. We find the following post construction population and mortality studies to be necessary and will require the applicant to conduct such post construction studies as a condition of the certificate:

1.) The Applicant shall conduct post-construction breeding bird surveys that replicate or improve upon the Stantec preconstruction surveys for the project; and,

2.) The Applicant shall conduct spring and fall diurnal raptor surveys that replicate or improve upon the 2009 Stantec survey, except that the fall surveys will extend into November to ensure capturing eagle migration; and,

3.) The Applicant shall conduct summer and early fall peregrine falcon surveys that replicate or improve upon the Stantec preconstruction surveys for the project; and,

4.) The Applicant shall conduct spring and fall nocturnal migratory bird radar surveys that replicate or improve upon the Stantec preconstruction surveys; and,

5.) The Applicant shall conduct acoustic surveys of bat activity that replicate or improve upon the Stantec preconstruction surveys; and,

6.) The Applicant shall conduct bird and bat mortality surveys that replicate or improve upon the West Incorporated 2010 post construction fatality survey conducted at

the Lempster wind project. Bird and bat mortality surveys shall temporally coincide with breeding bird surveys, diurnal raptor surveys, and nocturnal migrating bird surveys and bat surveys; and,

7.) Breeding bird surveys, diurnal raptor surveys, nocturnal migrating bird surveys, bat surveys, and bird and bat mortality surveys shall have a duration of three years, commencing during the first year of operation; and,

8.) The New Hampshire Fish and Game Department in consultation with the US Fish and Wildlife Service shall review and approve all study protocols; and,

9.) The Applicant shall commence informal monitoring as described in its Avian and Bat Protection Plan after completion of the aforementioned formal surveys. Said informal survey shall continue for the life of the project; and,

10.) Annual reports shall be submitted to and discussed with the New Hampshire Fish and Game Department and the United States Fish and Wildlife Service and shall serve as the basis for mitigation measures if effects are deemed unreasonably adverse.

iv. Interconnection Lines and Voltage Step-up Facility

The Applicant asserts that the interconnection line connecting the Facility with the line running along the Route 25 will not have an unreasonable adverse effect on the natural environment. The foot print of the interconnection line is relatively small and the Natural Heritage Bureau's online data check indicates that there are no known records of threatened, endangered or species of concern within a one-mile radius. Ex. App. 64, at 5; Ex. App. 66, at 4. Similarly, the Applicant asserts that the step-up voltage facility will not have significant unreasonable adverse effects on the natural environment inasmuch as the NHHB advised the Applicant that it does not have any records of the listed species on that site. Ex. App. 65, at 4. The record demonstrates that these features of the project will not adversely affect natural or exemplary communities or wildlife in the area.

The Applicant acknowledges that clearing for the interconnection line may have an impact on breeding birds that utilize this habitat type. Ex. App. 66, at 3. However, the Applicant asserts that the impact will not be significant because the interconnection route will utilize

existing skidder roads and ATV trails, and the local habitat has already experienced changes in the past resulting from the timber harvesting in the area. Ex. App. 66, at 4. As to the step-up voltage facility, the Applicant asserts that it will not have an unreasonable adverse effect on avian and bat species since the cleared area around the existing sand pit, and 115 kV transmittal line, already affect the avian habitat and bats will continue to use it for foraging. App. Ex. 67, at 4-5.

Based on the record, we find that neither the interconnection line nor the step-up transformer will cause an unreasonable adverse effect on the natural environment. Having considered the testimony, the exhibits and the arguments of the parties the Subcommittee finds that the Project, as set forth in the Application, as amended and subject to the conditions outlined in this decision will not have an unreasonable adverse effect on the natural environment.

e. Public Health and Safety

The Applicant asserts that the Project will not have an unreasonable adverse effect on public health and safety. The Applicant points out that the Project's access roads will have visible signs warning of the danger of potential falling ice; the wind turbines will be equipped with lightning protection systems protecting against blade damage; and each turbine will comply with design specifications, construction standards and will be certified in accordance with international engineering standards. Ex. App. 1, at 82. In addition, to prevent any potential danger to public health and safety, the Applicant will monitor and check the conditions of the turbines by making visual inspections of the blades and, if needed, ultrasonic inspections. Tr. 11/02/2010, Morning Session, at 79-80. The Applicant submits that the Project will comply with all applicable FAA requirements to assure aviation safety. Ex. App. 1, at 84. Finally, under Title 40 of Code of Federal Regulation §112.1, the Applicant will be required to develop and

maintain a Spill Prevention Control and Countermeasures Plan to comply with the U.S. Environmental Protection Agency's oil spill prevention, control, and countermeasures standards and to comply with inspection, reporting, training, and record keeping requirements. See, 40 C.F.R. §112.1.

i. Fire Safety and Ice Throws

a) Fire Safety

The Applicant asserts that a fire is unlikely to occur on the Site because the turbines will be routinely inspected by qualified personnel in accordance with preventive maintenance schedules and built-in safety design systems will minimize the chance of fire occurring in the turbines or electrical equipment. Ex. App. 1, at 83-84. In addition, the Applicant reports that, if fire were to occur, the turbine would automatically shutdown and the fire would be reported to the operation and maintenance building and to the operations center in Portland, Oregon. Ex. App. 1, at 84. In the unlikely event of lost satellite connection between the Center in Portland and the Site, site staff will operate the facilities manually. Tr. 11/02/2010, Morning Session, at 65. If determined that the operation of the turbines may pose danger to the health and safety, the Plant Manager of the Site will have the authority to shut down the turbines without prior agreement or directive from Portland . Tr. 11/02/2010, Morning Session, at 66. In addition, the Applicant asserts that it will comply with all industry standards and fire codes relating to fire safety. Ex. App. 1, at 84.

The Subcommittee received a letter from the State Fire Marshall, recommending that the following conditions be attached to the certificate. Ex. Buttolph 8.

1. All Structures, including but not limited to towers, nacelle, operation and maintenance buildings be constructed in accordance with the following codes and standards:

International Building Code, 2009 edition,

NFPA 1, Fire Code, 2009 edition,

NFPA 101, Life Safety Code, 2009 edition

NFPA 850, Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations, 2010 Edition.

2. In addition to any code required fire protection systems, monitored fire suppression systems shall be installed in each nacelle and generator housing.

The Applicant does not object to conditions requiring that the facility be constructed in accordance with all applicable building, electrical, life safety and fire codes. However, the Applicant asserts that monitored fire suppression systems, although available, are not standard in the industry, provide little protection and increase the risks to employees associated with accidental discharges of the suppression system. Tr. 11/02/2010, Morning Session, p. 84-85. The Applicant also claims that it hosted representatives from the Fire Marshal's office at its wind turbine facility in Lempster and also at its Hardscrabble, New York facility. As a result of those meetings, Edward Cherian, Project manager, testified that the Fire Marshal's office has refined its position and now requires only compliance with the "intent of the codes not the actual specifications." Tr. 03/22/2011, Morning Session, p. 104. However, the subcommittee has not received any confirmation of a change in the Fire Marshal's position.

After considering the testimony and evidence presented and giving due consideration to the request to the Fire Marshall, we find that the Applicant shall comply with all applicable federal and state fire, safety, and building codes and we condition the Certificate upon this requirement.

The Town of Plymouth presented one witness, Fire Chief Casino Clogston. Chief Clogston testified that the Town's Fire Department does not have sufficient equipment and training to address fires that may occur on the Site. Ex. Plymouth 1, at 4. As a preliminary matter, we note that the Town of Groton does not have its own Fire Department and will rely on other fire departments to respond to a fire occurring on the Site. Under the agreement between the Town of Groton and the Town of Rumney, the Fire Department of the Town of Rumney will respond in event of fire on the Site. Tr. 11/04/2010, Morning Session, at 106, 117, 125. The Fire Department of the Town of Plymouth is required to respond to a fire on the Site in accordance with a mutual aid agreement if the Fire Department of the Town of Rumney requests assistance. Tr. 11/04/2010, Morning Session, p. 106.

Chief Clogston, testified that, although it will not be the first responder in the event of fire on the Site, the Plymouth Fire Department needs additional training and equipment in order to guarantee that any fire danger caused by the turbines will be addressed in a satisfactory manner. Ex. Plymouth 1, p. 4. Specifically, Chief Clogston asserts that, under the worst-case scenario, if the Groton Hollow Road in Rumney were blocked and the Site was not accessible, firefighters would have to access the Site through the Tenney Mountain Ski Area by foot or ATV. Tr. 11/04/2010, Morning Session, at 118, 148. Accordingly, there is a certain level of risk that the fire fighters would not be able to promptly deliver all necessary equipment to the Site. Tr. 11/04/2010, Morning Session, at 107, 154. Therefore, the Town of Plymouth, Intervenors and Counsel for the Public request the Subcommittee to order the Applicant to provide the Town of Plymouth with additional training and the following equipment to ensure fire safety in the region: two Type 6 brush trucks, two six-person ATVs, three forestry high pressure portable pumps, and other associated equipment. Ex. Plymouth 1, p. 4. See, Brief of Town of Plymouth,

April 1, 2011. In the alternative, the Town of Plymouth requests the Subcommittee to order the Applicant to negotiate with the Town on emergency preparedness issues and enter into an appropriate agreement. See, Brief of Town of Plymouth, April 1, 2011.

We find that the Town of Plymouth has not demonstrated that such equipment is needed in order to address potential fire caused by the turbines. The Town will not be the first responder in the case of fire. Plymouth will respond as a member of a mutual aid agreement. The mutual aid agreement includes 37 towns. Tr. 11/04/2011, Morning Session, at 138.

In addition, the Agreement between the Applicant and the Town of Groton provides the following:

> The Owner shall cooperate with the Town's emergency services to determine the need for the purchase of any equipment required to provide an adequate response to an emergency at the Wind Farm that would not otherwise need to be purchased by the Town. If agreed between the Town and Owner, Owner shall purchase any specialized equipment for storage at the Project Site. The Town and Owner shall review together on an annual basis the equipment requirements for emergency response at the Wind Farm.

Ex. App. 32, §7.2. If the equipment requested by Chief Clogston is needed, it can be obtained by the Town of Groton and stored on-site in accordance with the Agreement.

Furthermore, as to the Town's request for additional training, we note the Agreement between the Town of Rumney and the Applicant already provides the avenue for the Town of Plymouth to address any need for additional training by stating the following:

> . . . Owner will provide annual training of a total of 8 hours of training at the Wind Farm. Groton Wind shall work to accommodate reasonable requests by the Rumney Fire, EMS, or Police Department for responders from other mutual aid towns to also attend the annual training at the same time with the Rumney responders. "

Ex. App. 7, §6.2. The Plymouth Fire Department can participate in the additional training upon request.

Therefore, the Subcommittee denies the Town of Plymouth's request for additional equipment and conditions. However, the Subcommittee finds that the Agreements with the Towns of Rumney and Groton should become conditions to the Certificate.

Finally, the Intervenors request the Subcommittee to condition the Certificate and require the Applicant to develop and submit to the Committee a detailed emergency plan. The Town of Rumney has already addressed the procedure for emergency responses in its agreement with the Applicant and such agreement is adopted by the Subcommittee as a condition to the Certificate and incorporated in this docket. See, Ex. Rumney 1, §6.

b) Ice Throws

The Subcommittee notes that wind projects may pose a potential danger of ice throws. Specifically, in cold weather conditions, the ice may accumulate on the blades of the turbines. Tr. 11/02/2010, Morning Session, at 75. The Applicant asserts that ice throws are unlikely to occur because ice generally melts gradually, allowing the turbine to spin slowly and causing the ice to slip off the blades and to fall on the ground. Tr. 11/02/2010, Morning Session, at 97-98. The Subcommittee received no credible evidence demonstrating that ice throws will cause an unreasonable adverse effect on public safety. The Subcommittee finds that the Project does not pose a danger to the human health and safety due to ice throws and finds it unnecessary to impose any conditions in this regard.

ii. Groton Hollow Road

The Application specifies the use of Groton Hollow Road and the upgraded existing logging road at the end of Groton Hollow Road for access to the Facility. Ex. App.1, at 40. The

use of Groton Hollow Road may pose dangers to the safety of its residents. Specifically, Mr. Whittemore testified that Groton Hollow Road is ultimately a one and one-half lane road and it is not capable of accommodating two motor vehicles at the same location. Tr. 11/05/2010, Morning Session, p. 112. Nevertheless, the Applicant intends to use this road for delivering the large pieces of machinery to the Project without creating any additional turnouts. Tr. 11/03/2010, Morning Session, p. 100. The Applicant submits that if, for any reason the vehicle will not be able to move up or down the road, it will be towed up into the Site or back out onto Route 25. Tr. 11/03/2010, Morning Session, p. 100. However, the Subcommittee noted that such situations may potentially cause danger to public safety, as the Applicant's vehicles will block the residents' access to Route 25 and the access of any other vehicle, including emergency vehicles, from Route 25 to the residents of Groton Hollow Road and to the Site. Tr. 11/03/2010, Morning Session, pp. 101-102. The Intervenors also raised concerns regarding the movement of heavy equipment along Groton Hollow Road and the prospect that such movement might "trap" residents, making access to Route 25 impossible. In response, the Applicant agreed to adhere to the policy guidance governing the Department of Transportation's over-sized vehicle permits, if any. Ex. App. 46. Unfortunately, neither the Applicant's response, nor the Department of Transportation's policy guidance, resolves this issue.

The Intervenors suggest that the Subcommittee may assure the safety of the residents of Groton Hollow Road by requiring the Applicant to build a primary access road to the Project from Halls Brook Road instead of accessing the Project via Groton Hollow Road. See, Final Brief of Buttolph/Lewis/Spring Group of Intervenors, April 1, 2011, p. 36. However, that request is without merit as well. The Applicant already determined that access from Halls Brook

Road would not meet the environmental engineering specifications that were developed in consultation with DES.

The Subcommittee finds that the safety of residents on Groton Hollow Road can be assured by less intrusive means than constructing an additional access road. Alternative means of transportation and adequate advance notice of the movement of large construction equipment will assist the residents of Groton Hollow Road in planning the ability to ingress and egress. Additionally, the strategic pre-location of emergency vehicles could assist with emergency medical situations. However, the details of such a plan are best left to the discretion of the Applicant and the Town of Rumney, in consultation with the residents of Groton Hollow Road. We will, therefore, require the following condition:

> The Applicant shall develop a plan with the Town of Rumney in consultation with the residents of Groton Hollow Road, addressing the following: (1) adequate advance notification to the residents of Groton Hollow Road of the movement of oversized loads on Groton Hollow Road, including the date and time when the vehicle traffic will be blocked on Groton Hollow Road; (2) alternative transportation for residents of Groton Hollow Road during times when Groton Hollow Road is blocked to normal vehicular traffic; and (3) a plan to deal with emergencies that may occur on Groton Hollow Road during the times when Groton Hollow Road is blocked to emergency vehicle traffic**.**

Alternatively, the Intervenors request the Subcommittee to impose a number of additional conditions, allegedly insuring that the Project will not have an unreasonable adverse effect on health and safety of the residents of Groton Hollow Road, including, but not limited to monetary compensation, pre-construction surveys of residences, joint liability for any damages to properties, a restriction to work on Sundays, and a requirement not to widen Groton Hollow Road "under any circumstances." See, Final Brief of Buttolph/Lewis/Spring Group of Intervenors dated April 1, 2011, at 36-37. The Subcommittee reviewed the request submitted by the Intervenors and finds it overly broad and unwarranted. The purpose of our review is to ensure that the Project will not have an unreasonable adverse effect on the health and safety of

residents of Groton Hollow Road. The Subcommittee finds that this purpose is achieved by the aforementioned conditions.

iii. Noise

a) Effect on Human Health

The Applicant asserts that noise from the Project will not have an unreasonable adverse impact on the health and safety of the residents of the region. The Applicant presented a sound level assessment demonstrating that sound levels due to wind turbine operation will be less than 45dBA, and implies that such sound should be considered safe by the Subcommittee. The Applicant points out that the Committee approved similar sound levels at the Lempster Wind project. Ex. App. 1, at 85-86; Tr. 11/02/2010, Afternoon Session, at 71-72, 87. In addition, the Applicant asserts that noise from the interconnection line and the step-up voltage facility, will not have an unreasonable adverse effect on the region. The Applicant claims that the "worst-case" sound level from the transformer will be 29 dBA. A sound level of 29 dBA is as low as, or lower than existing sound levels in the area from traffic and other natural and man-made sources. Ex. App. 68, at 2.

The Mazur Intervenors expressed concern that the sound generated by the turbines may cause "Wind Turbine Syndrome" and a related illness known as Vibro-Acoustic Disease. Ex. Mazur 13. Mr. Wetterer introduced a number of articles addressing the issue of impact of noise on human health in support of his position that the noise generated by the turbines may have an adverse effect on public health. Ex. Mazur 13. Dr. Mazur and Mr. Wetterrer acknowledge that Wind Turbine Syndrome is not widely recognized by the scientific community and may need further laboratory research and analysis. Ex. Mazur 13., Tr. 11/04/2010, Afternoon Session, pp. 99-100, 104. Dr. Mazur and Mr. Wetterrer, however, urge the Subcommittee to suspend the

certification of Project until a more comprehensive scientific or medical assessment of the impact of noise generated by the wind turbines on the human health is made. Tr. 11/04/2010, Afternoon Session, pp. 117, 123.

Counsel for the Public, through its expert witness Gregory Tocci, confirms that infrasound[12] produced by wind farms has been discussed in the literature. Tr. 11/03/2010, Afternoon Session, p. 49. However, according to Mr. Tocci, none of the literature demonstrates a correlation between incidences of Wind Turbine Syndrome with sound levels at receptor locations in proximity to wind turbines. Tr. 11/03/2010, Afternoon Session, p. 49-50. As to vibroacoustic disease, Mr. Tocci agreed that it is plausible that certain sound waves could affect the connective tissue of the heart and lungs. Tr. 11/03/2010, Afternoon Session, at 50. However, according to Mr. Tocci, the sound level produced by the wind turbines simply does not rise to the level where it could have adverse effect on the connective tissue. Tr. 11/03/2010, Afternoon Session, at 50.

The evidence and testimony presented suggest that sound levels may be categorized into four different groups, identifying its effect on human health: (1) very low sound levels inaudible to human beings (infrasound); (2) higher sound levels, which may cause nuisance or annoyance (modulated broadband sound); (3) higher sound levels, which may cause symptoms that are sometimes associated with Wind Turbine Syndrome; (4) the highest levels, which may cause physical damage, including vibroacoustic disease. The record reveals that infrasound or modulated broadband sound do not generally pose a significant danger to human health. It is undisputed that some sound levels may cause annoyance. However, there is a distinction to be drawn between annoyance or nuisance and serious illness.

[12] "Infrasound" is defined as sound below 20 Hertz. Tr. 11/03/2010, Afternoon Session, at 71.

We are not persuaded by the Intervenors' evidence that "Wind Turbine Syndrome" will be a public health result from the construction of the Facility. The existence of Wind Turbine Syndrome has not been scientifically established and the Intervenors have not pointed us to any specific characteristics of this Project that are likely to cause the constellation of symptoms which the Intervenors allege establish this "syndrome".

We also find the assertion that the Project may affect human health by causing vibroacoustic disease to be unpersuasive. It is undisputed that only significant high sound wave levels can affect the connective tissue. In fact, vibroacoustic disease is generally connected to sound levels caused by close proximity to jet engines. The Project will not generate such sound levels. Therefore, we find that the Project will not have adverse effect on human health by causing vibroacoustic disease.

b) Annoyance

The issue of wind turbine sound as a nuisance or annoyance presents a contested issue in this docket. The issue is particularly relevant when we consider the effect of turbine sound on the nearby campground owned by Ms. Lewis.

According to Mr. Tocci, the "modulated broadband sound"[13] or, as often described, "swooshing" sound, may cause annoyance and disruption of regular indoor and outdoor activities. Ex. PC 1. Mr. Tocci asserts that in order to avoid such impacts, the Project's sound level should not exceed 40 dBA at residential uses, *i.e.* outside the residential home. Ex. PC. 2, at 12; Tr. 11/03/2010, Afternoon Session, at 112-113. This level is recommended in the World Health Organization Night Noise Guidelines and cited by the Acoustic Ecology Institute as the level at which a dramatic increase in the proportion of the population will become annoyed by

[13] "Modulated Broadband Sound" was defined as the sound generated by the turbine blade passing through the air, that is bounded by an envelope that allows it to rise and fall with the sound. Tr. 11/03/2010, Afternoon Session, at 71.

turbine noise. Ex. PC. 2, at 12-13. In addition, Mr. Tocci recommends that we apply a baseline sound level requirement to ensure that the noise generated by the wind turbines will not adversely affect public health and safety. Ex. PC 2, at 12. Mr. Tocci categorized the sound impacts of the turbines based upon the extent to which the turbine sounds cause an increase over the baseline sound levels. Mr. Tocci describes an increase above the baseline sound level by 5 dBA or less as no impact. An increase over baseline between 5 dBA and 10 dBA is described as a minor impact. An increase in excess of 10 dBA or more, according to Mr. Tocci, constitutes a significant impact. Ex. PC 2, p. 12; Tr. 11/03/2010, Afternoon Session, p. 131. Mr. Tocci submits that we should require the Applicant to apply some noise control measures where the impact is significant or, under some circumstances, if the impact is minor. Tr. 11/03/2010, Afternoon Session, at 131-132.

According to Mr. Tocci, a two-tiered sound control condition will guard against excessive modulated broadband sound and will guarantee that the noise generated by the Facility will not have an unreasonable adverse effect on public health and safety. Ex. PC. 2, at 13. Counsel for the Public requests the Subcommittee to require the Applicant to ensure that the noise generated by the Project will not exceed 40dBA or 5dBA above Mr. Tocci's baseline. See, Closing Memorandum and Proposed Conditions, April 1, 2011, p. 12.

The Town of Groton has considered the issue of the Project's noise impact in its Agreement with the Applicant by including the following "residential noise restrictions":

> [a]udible sound from the Wind Farm during Operations shall not exceed 55dB(A) as measured at 300 feet from any existing Occupied Building on a Non-participating Landowner's property, or at the property line if it is less than 300 feet from an existing Occupied Building. This sound pressure level shall not be exceeded for more than a total of three minutes during any sixty minute period of the day. If the Ambient Sound Pressure Level

> exceeds 55 dB(A), the standard shall be ambient dB(A) level plus 5 dB(A).

Ex. App. 32, §11.1. The Town and the Applicant agree that this condition will be part of the Certificate.

In addition, Counsel for the Public recommends that the Subcommittee also require a mitigation response to complaints similar to that included in the Certificate governing the Lempster Wind facility. The Lempster Wind Certificate, in pertinent part, states:

> . . . if sound levels at the outside facades of homes exceed 45 dBA or 5 dBA greater than ambient, whichever is greater, to ensure that interior bedroom sound levels do not exceed 30 dBA or 5dBA greater than ambient, whichever is greater, with windows closed. In addition, during summer nights when some people sleep with their bedroom windows open, we will require the applicant to undertake operational or other measures to reduce the sound level at the outside facades of homes to not more than 45 dBA or 5 dBA above ambient, whichever is greater, if installation of a home mitigation package is not otherwise sufficient to reduce project noise inside bedrooms to 30 dBA or 5 dBA above ambient sound levels, whichever is greater, with windows open.

See, Decision Issuing Certificate of Site and Facility with Condition, Docket No. 2006-01, 46 (issued June 28, 2007).

In Lempster, the Subcommittee gave special consideration to the Goshen-Lempster School and conditioned the Certificate upon the following:

> [a]udible sound from the Wind Park at the Goshen-Lempster School shall not exceed 45 dB(A). If the Ambient Sound Pressure Level at the Goshen-Lempster School exceeds 45 dB(A), at the school, the standard shall be ambient dB(A) plus 5 dB(A).

See, Decision Issuing Certificate of Site and Facility with Condition, Docket No. 2006-01 (issued June 28, 2007).

Ms. Lewis urges the Subcommittee to grant similar consideration to her campground. She states that such consideration is warranted because the visitors of the campground stay

outside in the tents and would be susceptible to sound generated by the Project. Mr. Tocci supports Ms. Lewis' concerns and acknowledges that at the quietest time, for one to three hours beginning at midnight, the wind farm will be frequently audible at the Campground when it will generate sound exceeding the baseline sound level by 8 to 9 dBA and, at all other times, it may be intermittent. Tr. 11/03/2010, Afternoon Session, at 53, 93-95, 117-118. Therefore, Ms. Lewis requests the Subcommittee to adopt the standard established in the so-called "Deerfield Project" by requiring the Applicant to ensure that the noise level outside of interior bedroom and tents of the Campground will not exceed 30 decibels between the hours of 10 p.m. and 8:00 a.m., or a maximum 5 dBA above the existing ambient sound levels. Tr. 11/05/2010, Afternoon Session, p. 27; Final Brief, Intervenor Group Buttolph/Lewis/Spring, April 1, 2011, at 36.

The Applicant asserts that the turbines will not be have an unreasonable adverse affect on the campground because the "worst-case scenario" sound level recorded by Mr. Tocci, would cause the noise level at the campground to increase to approximately 32 decibels and the average sound level on the camp ground is already approximately 30 decibels. Ex. App. 4, Appx. 35, Figure 7-1; Tr. 11/02/2010, Afternoon Session, at 48-50, 58.

The decision in Lempster was partially based on the "Guideline for Community Noise" (World Health Organization, Geneva, 1999) stating that "the daytime and evening outdoor living area sound levels at a residence should not exceed 55 dBA Leq to prevent 'serious annoyance', and 50 dBA Leq to prevent 'moderate annoyance' from a steady, continuous noise. At night, sound levels at the outside facades of the living spaces should not exceed 45 dBA Leq so that people may sleep with bedroom windows open." See, Decision Issuing Certificate of Site and Facility with Condition, Application of Lempster Wind, LLC, Docket No. 2006-01, 46 (issued June 28, 2007). We also note that it is unclear, based on Mr. Tocci's testimony, as to whether

the absolute limit, or the "above baseline" sound level, should apply. It stands to reason that, at some sound levels, a standard based upon a baseline will be inapplicable, *i.e.*, the situations where the baseline sound level is so low that even an increase by 10 dBA would not generate sound levels annoying to human beings. We will condition the Certificate on a requirement that focuses on the greater of the absolute limit or the "above baseline" limit. Therefore, we will require the Applicant to comply with the same standard regarding noise that was imposed on the Lempster facility; thus, the sound levels generated by the Facility shall not exceed 55 dBA or 5 dBA greater than ambient, whichever is greater, at the outside façade of any residence during the daytime. At night (10:00 p.m. until 6:00 a.m.), the sound levels generated by the Facility shall not exceed 45 dBA or 5 dBA greater than ambient, whichever is greater, at the façade of any residence.

In addition, we agree with Ms. Lewis's assertion that her Campground presents a unique situation. It is not reasonably disputed that people sleeping in tents and not protected by solid walls of residences are more vulnerable to the sound levels. Taking into consideration that the World Health Organization suggests that people may sleep comfortably with their windows opened when the sound level in the living spaces does not exceed 45 dBA, along with the absolute exposure of the visitors of the campground to the sound generated by the Project , we condition the Certificate upon a requirement that the sound level from the Project shall not exceed 40 dBA or 5 dBA greater than ambient, whichever is greater as measured within current boundaries of the campground owned by Ms. Lewis.

We find that an additional measure of protection will result from the post-construction noise control measurements required of the Applicant in the Agreement with the Town of Groton which, in relevant part, states:

> **Post-Construction Noise measurements.** After commercial operations of the Wind Farm commence, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Owner and Town. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons, and nighttime after 10 pm. All sound pressure levels shall be measured with sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Owner shall provide the final report of the acoustics engineer to the Town within 30 days of its receipt by the Owner.

Ex. App. 32, ¶11.2.

The same level of protection should also be granted to the residents of the Town of Rumney in order to guarantee that the Project will not have an unreasonable adverse noise effect on residents of Rumney. Furthermore, we hold that the Applicant shall provide the final report of the acoustic engineer to the Subcommittee, as well as to the Towns of Groton and Rumney within, 30 days of its receipt by the Applicant.

To the extent that Counsel for the Public and Intervenors have suggested additional mitigation measures or measurements, we find them unnecessary and duplicative. However, we agree with the Intervenor's position that the residents of affected towns should have the opportunity to raise their concerns and request the Applicant to address and remedy any potential violations of this Certificate. We note that Section 5.1 of the Agreement with the Town of Groton, Public Inquiries and Complaints, provides avenues for public inquires and complaints to the Residents of the Town of Groton by stating:

> **Public Inquiries and Complaints.** During construction and operation of the Wind Farm, and continuing through completion of decommissioning of the Wind Farm, the Owner shall identify an individual(s), Including phone number, email address, and mailing

> address, posted at the Town House Office, who will be available for the public to contact with inquiries and complaints. The Owner shall make reasonable efforts to respond to and address the public's inquiries and complaints. This process shall not preclude the local government form acting on a complaint.

Ex. App. 32, ¶5.1.

The opportunity to make inquiries or complaints should be available to all residents of potentially affected towns. Therefore, the conditions identified in Section 5.1 of the Agreement with the Town of Groton shall apply to the Towns of Rumney, Holderness, Plymouth and Hebron as well as to the Town of Groton. The Applicant shall post information identifying individuals available for public inquiries and complaints and their contact information in the town offices of Rumney, Holderness, Plymouth, Hebron, and Groton.

We note that §13.1 of the Agreement between the Town of Groton and the Applicant contains a provision allowing a "participating" or "non-participating" landowner in Groton to waive the noise restriction requirements. We see no reason why we should not allow residents of Rumney or any other affected community to similarly waive the noise requirements.

Ex. App. 32, ¶13.1.

Therefore, we hold that the Certificate, conditioned upon the Applicant's compliance with the Agreement with the Town of Groton, as amended herein, and the terms and conditioned of said agreement are incorporated in this docket. Also, we note that the Applicant agreed to abide by the construction hours limitations set forth in the Agreement with the Town of Groton in the construction of the voltage step-up facility in order to ensure that the Project will not have unreasonable adverse effect on public health and safety. See, Applicant's Response to Conditions Proposed by Counsel for the Public and Intervenors dated April 5, 2011, at 15. Therefore, we condition the Certificate upon requirement that the Applicant shall comply with

the Town of Groton in the construction of the voltage step-up facility. After reviewing the testimony, exhibits and arguments of the parties, the Subcommittee concludes that the Facility will not have an unreasonable adverse effect on public health and safety, subject to the conditions identified herein.

VI. CONCLUSION

Throughout the pendency of this Application, the Subcommittee has endeavored to be as transparent and inclusive as possible. We held a public meeting and accepted comments from the public both orally and in writing. The parties have had a full and fair opportunity to raise all issues and present their arguments. As a consequence, we are confident that we heard and understand the positions of all the parties, the potential impacts of the proposed Project and the effects that it will have on the region and the entire state.

We have considered the Application, the exhibits, the testimony, the briefs, public comments, letters, and oral arguments. We have fully reviewed the environmental impacts of the proposed facility. We have also considered all other relevant factors bearing on the objectives of R.S.A. 162-H. Having done so, we find, subject to the conditions discussed herein and made a part of the Order and Certificate, that:

The Applicant has adequate technical, managerial and financial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the Certificate;

The construction and operation of the facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning committees and governing bodies; and,

The construction and operation of the facility will not have an unreasonable adverse effect on aesthetics, historic sites, air quality, water quality, the natural environment or public health or safety.

Thomas B. Getz, Chairman
Public Utilities Commission

Stephen Perry, Inland Fisheries Division Chief
Fish and Game Department

Robert Scott, Director
Department of Environmental Services

Eric Steltzer, Energy Policy Analyst
Office of Energy and Planning

Brook Dupee, Senior Health Policy Analyst
Department of Health and Human Services

Donald Kent, Designee
Dept. of Resources & Econ. Development

Richard Boisvert, State Archeologist
NH Division of Historical Resources

Charles Hood, Administrator
Department of Transportation

Michael Harrington, State Engineer
Public Utilities Commission

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 48 MW Wind Turbine Facility in Groton, Grafton County, New Hampshire

May 6, 2011

ORDER AND CERTIFICATE OF SITE AND FACILITY WITH CONDITIONS

WHEREAS, Groton Wind, LLC, (Applicant) has filed an Application for a Certificate of Site and Facility (Application) to site, construct, and operate a Renewable Energy Facility (Facility or Project) consisting of 24 Gamesa G82 wind turbines each having a nameplate capacity of 2 megawatts ("MW") for a total nameplate capacity of 48 MW to be located in the Town of Groton, Grafton County, New Hampshire (Site);

Whereas, the Facility does not yet have a formal street address but will be accessible from an access road off of Groton Hollow Road in Rumney, New Hampshire and the proposed Site consists of 4,180 acres and is bounded by Route 25 to the North, Tenney Mountain Ski Resort to the East, the Forest Society's Cockermouth Forest to the South, and Halls Brook Road to the West;

Whereas, this area consists of two distinct ridgeline features known as Tenney Mountain and Fletcher Mountain, which are separated by a valley known as Groton Hollow and twelve wind turbines will be situated generally in a north-south direction along the Tenney Ridge, six turbines will be oriented on the southern knob of Fletcher Mountain, and six turbines will oriented on the northwest knob of Fletcher Mountain. In addition to the turbines, the Project will consist of the roads, an electrical collection system, an electrical switchyard, transmission lines, a voltage step-up facility, an operations and maintenance building, a meteorological tower, all as further described in the Application as amended;

Whereas, the individual turbines will be connected to a 34.5 kV collection system. Each turbine will be connected to a 2,350 kV transformer and connection cabinet and several turbines will be loop connected through the collection circuits and junction boxes, which, in turn, will be connected to the Facility's switchyard. The generated output will be transmitted via 34.5 kV transmission line;

Whereas, the interconnection line will run from the Project to Route 25 and will be comprised of approximately 37 poles, 10 to 12 of which will be located on the existing leased premises and

approximately 25 of which will be located along easements on private property; once the line reaches Route 25, it will travel along Route 25 using poles currently utilized by New Hampshire Cooperative (NH Coop);

Whereas, The interconnection line will eventually leave Route 25 and will connect with the 34.5 kV-115 kV voltage step-up facility located on a 5 acre parcel of privately-owned land in Holderness, Grafton County, New Hampshire;

Whereas, the output will then be transmitted to the Northeast Utilities, Beebe River Substation via a 115 kV line;

Whereas, the Subcommittee has held a number of public meetings and hearings regarding the Application including a Public Information Hearing pursuant to R.S.A. 162-H:10, on June 28, 2010; adjudicatory proceedings on November 1-5, 2010 and on April 22-23, 2011 to hear evidence regarding the Application;

Whereas, the Subcommittee has received and considered both oral and written comments from the public concerning the Application;

Whereas, the Subcommittee has considered available alternatives and fully reviewed the environmental impact of the Site and all other relevant factors bearing on whether the objectives of R.S.A. 162- H would be best served by the issuance of a Certificate of Site and Facility (Certificate);

Whereas, the Subcommittee finds that, subject to the conditions herein, the Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the Project in continuing compliance with the terms and conditions of this Certificate;

Whereas, the Subcommittee finds that, subject to the conditions herein, the Project will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies;

Whereas, the Subcommittee finds that, subject to the conditions herein, the Project will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety; and,

Whereas, on even date herewith the Subcommittee has issued a Decision Granting Certificate of Site and Facility With Conditions (Decision).

NOW THEREFORE, it is hereby ORDERED that the Application of Groton Wind, LLC, as amended, is approved subject to the conditions set forth herein and this Order shall be deemed to be a Certificate of Site and Facility pursuant to R.S.A. 162-H: 4; and it is,

Further Ordered that the Site Evaluation Subcommittee's Decision dated May 6, 2011, and any conditions contained therein are hereby made a part of this Order; and it is,

Further Ordered that the Applicant may site, construct and operate the Project as outlined in the Application, as amended, and subject to the terms and conditions of the Decision and this Order and Certificate; and it is,

Further Ordered that this Certificate is not transferable to any other person or entity without the prior written approval of the Subcommittee; and it is,

Further Ordered that the Applicant shall immediately notify the Site Evaluation Committee of any change in ownership or ownership structure of the Applicant or its affiliated entities and shall seek approval of the Subcommittee of such change; and it is,

Further Ordered that all permits and/or certificates recommended by the New Hampshire Department of Environmental Services including the Wetlands Permit, the Site Specific Alteration of Terrain Permit, and the Section 401 Water Quality Certificate shall issue and this Certificate is conditioned upon compliance with all conditions of said permits and/or certificates which are appended hereto as Appendix I; and it is,

Further Ordered that the New Hampshire Department of Environmental Services is authorized to specify the use of any appropriate technique, methodology, practice or procedure associated with the conditions of the Wetlands Permit, the Site Specific Alteration of Terrain Permit, and the Section 401 Water Quality Certificate, including the authority to approve modifications or amendments to said permits and certificates; and it is,

Further Ordered that the Applicant shall continue to cooperate with the requirements of ISO-New England and obtain al ISO approvals necessary to a final interconnection agreement for a gross unit rating up to 48 MW. Said interconnection agreement shall be filed with the Subcommittee prior to the commencement of constructions; and it is,

Further Ordered that the Agreement between the Town of Groton and the Applicant, attached as Appendix II, shall be a part of this Order and the Conditions contained therein shall be conditions of this Certificate. To the extent that any disputes arise under the Agreement with the Town of Groton the parties shall file a motion for declaratory ruling, a motion for enforcement or such other motion as may be procedurally appropriate with the Subcommittee and the Subcommittee shall make such final interpretations or determinations that may be necessary; and it is,

Further Ordered that the Agreement between the Town of Rumney and the Applicant, attached as Appendix III, shall be a part of this Order and the Conditions contained therein shall be conditions of this Certificate. To the extent that any disputes arise under the Agreement with the Town of Rumney the parties shall file a motion for declaratory ruling, a motion for enforcement or such other motion as may be procedurally appropriate with the Subcommittee and the Subcommittee shall make such final interpretations or determinations that may be necessary; and it is,

Further Ordered that the Applicant shall comply with the Town of Holderness' "dark sky" ordinance, as applied to the voltage step-up facility, to the extent it is not contrary to applicable life safety codes, building codes, or fire codes; and it is,

Further Ordered that the Applicant shall continue its consultations with the New Hampshire Division of Historical Resources (NHDHR) and comply with all agreements and memos of understanding with that agency and, in the event that new information or evidence of a historic site, or other archeological resources, are found within the area of potential effect of the Project Site, the Applicant shall immediately report said findings to NHDHR and the Committee; and it is,

Further Ordered that, if during construction or thereafter, any archeological resources or deposits are discovered or affected as a result of project planning or implementation, NHDHR shall be notified immediately and NHDHR shall determine the need for appropriate evaluative studies, determinations of National Register eligibility, and mitigation measures (redesign, resource protection, or data recovery) as required by state or federal law and regulations. If construction plans change, notification to and consultation with the NHDHR shall be required. If any member of the public raises new concerns about the effect on historic resources, notification to and consultation with the NHDHR shall be required. NHDHR is authorized to specify the use of any appropriate technique, methodology, practice or procedure associated with historical resources effected by the Project, including the authority to approve modifications to such practices and procedures as may become necessary; and it is,

Further Ordered that the Applicant shall conduct breeding bird surveys that replicate or improve upon the Stantec pre-construction surveys for the project; spring and fall diurnal raptor surveys that replicate or improve upon the 2009 Stantec survey, except that the fall surveys will extend into November to ensure capturing eagle migration; summer and early fall peregrine falcon surveys that replicate or improve upon the Stantec pre-construction surveys for the project; spring and fall nocturnal migratory bird radar surveys that replicate or improve upon the Stantec pre-construction survey for the project; acoustic surveys of bat activity that replicate or improve upon the Stantec pre-construction survey for the project; bird and bat mortality surveys that replicate or improve upon the West, Inc. 2010 Post-Construction Fatality Survey for the Lempster Wind Project, shall temporally coincide with breeding bird surveys, diurnal raptor surveys, nocturnal migrating bird surveys, and bat surveys. The breeding bird survey, diurnal raptor survey, nocturnal migrating bird survey, bat survey, and bird and bat mortality survey shall have duration of three years, commencing during the first year of operation. New Hampshire Fish & Game (NHF&G), in consultation with U.S. Fish & Wildlife Service (USFW), shall review and approve all study protocols. The Applicant shall commence informal monitoring as described in Iberdrola's Bird and Bat Protection Plan after completion of the aforementioned surveys. Informal monitoring shall continue for the life of the Project. Annual reports shall be submitted to, and discussed with, NHF&G and USFW, and shall serve as the basis for mitigation measures if effects are deemed unreasonably adverse; and it is,

Further Ordered that the Applicant shall develop a plan with the Town of Rumney, in consultation with the residents of Groton Hollow Road, addressing adequate advance notification to the residents of Groton Hollow Road of the movement of oversized loads on Groton Hollow

Road, including the date and time when vehicle traffic will be blocked on Groton Hollow Road; alternative transportation for residents of Groton Hollow Road during times when Groton Hollow Road is blocked to normal vehicular traffic; and a plan to deal with emergencies that may occur on Groton Hollow Road during the times when Groton Hollow Road is blocked to emergency vehicle traffic; and it is,

Further Ordered that the sound levels generated by the Project at the outside facades of homes should not exceed 55 dBA or 5 dBA greater than ambient, whichever is greater, in day time and 45 dBA or 5 dBA greater than ambient, whichever is greater, at night; and it is,

Further Ordered that the sound levels generated by the Project shall not exceed 40 dBA or 5 dBA greater than ambient, whichever is greater as measured within current boundaries of the Baker River Campground presently owned and operated by Ms. Cheryl Lewis; and it is,

Further Ordered that, after commercial operations of the Project commence, the Applicant shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Applicant and Towns of Groton and Rumney. The periods of the noise measurements shall include, at a minimum, daytime, winter and summer seasons, and nighttime after 10 p.m. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Applicant shall provide the final report(s) of the acoustics engineer to the Subcommittee and Towns of Groton and Rumney within 30 days of its receipt by the Applicant; and it is,

Further Ordered that any landowner may waive the noise restriction set forth by this Certificate by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. The written waiver shall state that the consent is granted for the Project not to comply with the sound limits set forth in the Certificate; and it is,

Further Ordered that, during construction and operation of the Project, and continuing through completion of decommissioning of the project, the Applicant shall identify an individual(s), including phone number, email address, and mailing address, posted at the town offices of the Towns of Rumney, Holderness, Plymouth, Hebron, and Groton, who will be available for the public to contact with inquiries and complaints. The Applicant shall make reasonable efforts to respond to and address the public's inquiries and complaints. This process shall not preclude the local government from acting on a complaint; and it is,

Further Ordered that any complaint made to the Applicant shall be kept by the Applicant in a permanent log setting forth the identity of the complainant, the date of the complaint, the nature of the complaint. The Applicant shall annually file its response(s) to the complaint(s) contained in the log with the Committee.

Further Ordered that the Applicant shall construct the voltage step-up facility located in the Town of Holderness, between 6:00 a.m. and 7:00 p.m., Monday – Saturday, unless prior approval is obtained from the Town of Holderness; and it is,

Further Ordered that all Conditions contained in this Certificate and in the Decision shall remain in full force and effect unless otherwise ordered by the Subcommittee.

Thomas B. Getz, Chairman
Public Utilities Commission

Stephen Perry, Inland Fisheries Division Chief
Fish and Game Department

Robert Scott, Director
Department of Environmental Services

Eric Steltzer, Energy Policy Analyst
Office of Energy and Planning

Brook Dupee, Senior Health Policy Analyst
Department of Health and Human Services

Donald Kent, Designee
Dept. of Resources & Econ. Development

Richard Boisvert, State Archeologist
NH Division of Historical Resources

Charles Hood, Administrator
Department of Transportation

Michael Harrington, State Engineer
Public Utilities Commission

APPENDIX I –PERMITS AND CERTIFICATES

WETLANDS BUREAU FINAL DECISION
OCTOBER 8, 2010

RECOMMEND APPROVAL WITH THE FOLLOWING PERMIT CONDITIONS:

PROJECT DESCRIPTION:

Dredge and fill 1.65 acres (71,680 square feet) of wetlands and streams (impacting 4,302 linear feet) and temporarily impact .33 acres (14,130 square feet) of wetlands and 320 square feet within a stream, to construct a power generating wind park that will include the construction of 24 wind turbines (2.0 megawatts each), approximately 12 miles of gravel access drives, a 4,000 square foot operations/maintenance building, stockpile and lay down pad areas, and associated transmission lines. Mitigate impacts by making a in-lieu fee payment of $150,000 into the DES Aquatic Resources Mitigation (ARM) Fund; by upgrading nine existing stream crossings along Groton Hollow Road to meet the new DES stream rules; and by providing technical assistance to the Society for the Protection of New Hampshire Forests (SPNHF) by donating survey data, title research, and environmental baseline data to assist SPNHF in their efforts to protect 6,578 acres of undeveloped land known as the Green Acre Woodlands Project.

PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with revised plans by Vanasse Hangen Brustlin, Inc. dated July 9, 2010, as received by the NH Department of Environmental Services (DES) on July 26, 2010.
2. Prior to construction, any plan revisions or changes in construction details or sequences shall be submitted to DES for review and approval.
3. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau.
4. This permit is contingent on approval by the DES Alteration of Terrain Bureau.
5. No construction activities shall occur on the project after expiration of the approval unless the approval has been extended by the New Hampshire Energy Facility Site Evaluation Committee (SEC).
6. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
7. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
8. Dredged material shall be placed outside of the jurisdiction of the DES Wetlands Bureau.
9. Stream work shall be done during low flow conditions.
10. Culvert outlets shall be protected in accordance with the DES Best Management Practices for Urban Stormwater Runoff Manual (January 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August 1992).
11. Proper headwalls shall be constructed within seven days of culvert installation.

12. Within three days of final grading, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
13. Where construction activities have been temporarily suspended within the growing season, all exposed soil areas shall be stabilized within 14 days by seeding and mulching.
14. Where construction activities have been temporarily suspended outside the growing season, all exposed areas shall be stabilized within 14 days by mulching and tack. Slopes steeper than 3:1 shall be stabilized by matting and pinning.
15. The contractor responsible for completion of the work shall utilize techniques described in the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).

Restoration Conditions:

16. This permit is contingent upon the restoration of 14,450 square feet of wetlands and streams that are being temporarily impacted in accordance with the plans received by DES on March 29, 2010.
17. All temporary wetland and stream impact areas shall be properly restored, and shall be monitored to ensure that functioning wetland areas similar to those destroyed by the project are replicated. Remedial measures may be necessary for successful restoration, which can include replanting, relocating plantings, removal of invasive species, changing soil composition and depth, changing the elevation of the wetland surface, and changing the hydrologic regime.
18. The permittee shall designate a qualified professional who will be responsible for monitoring and ensuring that the restoration areas are completed in accordance with the plans. Monitoring shall be accomplished in a timely fashion and remedial measures taken if necessary. The Wetlands Bureau shall be notified in writing of the designated professional prior to the start of work and if there is a change of status during the project.
19. The permittee or a designee shall conduct a follow-up inspection after the first growing season, to review the success of the restoration areas and schedule remedial actions if necessary. A report outlining these follow-up measures and a schedule for completing the remedial work shall be submitted by December 1 of that year. Similar inspections, reports and remedial actions shall be undertaken in at least the second (2^{nd}) year following the completion of each restoration area.
20. Wetland restoration areas shall have at least 75% successful establishment of wetlands vegetation after a full growing season, or shall be replanted and re-established until a functional wetland is replicated in a manner satisfactory to the DES Wetlands Bureau.
21. The permittee shall attempt to control invasive, weedy species such as purple loosestrife (Lythrum salicaria) and common reed (Phragmites australis) by measures agreed upon by the Wetlands Bureau if the species is found in the restoration areas during construction and during the early stages of vegetative establishment.
22. A post-construction report documenting the status of the completed project with photographs shall be submitted to the Wetlands Bureau within 60 days of the completion of construction.

Mitigation Conditions:

23. This approval is contingent on receipt by DES of a one time payment of $150,000 to the DES Aquatic Resource Mitigation (ARM) Fund. If the project is approved by the New Hampshire Energy Facility Site Evaluation Committee (SEC), then the payment shall be received by DES within 120 days of the date of their approval.
24. This permit is contingent upon the upgrade of nine existing stream crossings along Groton Hollow Road in order to meet the standards of the DES stream rules (Env-Wt 900).

25. This permit is contingent upon Groton Wind, LLC donating to SPNHF the property survey data and mapping, title research, and environmental baseline data to support their efforts in preserving 6,578 acres of undeveloped land known as the Green Acre Woodlands Project.

FINDINGS:

1. This project is classified as a Major Impact Project per NH Administrative Rule Env-Wt 303.02(c), as wetland impacts are greater than 20,000 square feet.
2. The need for the proposed impacts has been demonstrated by the applicant per Rule Env-Wt 302.01.
3. The applicant has provided evidence which demonstrates that this proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per Rule Env-Wt 302.03.
4. The applicant has demonstrated by plan and example that each factor listed in Rule Env-Wt 302.04(a), Requirements for Application Evaluation, has been considered in the design of the project.
5. DES Staff conducted a field inspection of the proposed project on June 29, 2010. Field inspection determined that the majority of the site has been historically and actively logged and that the upgrades to culverts along Groton Hollow Road were necessary in order to meet the stream rules.
6. Public hearing is not required with the finding that the project will not impact wetland areas that are considered to be of special value from a local, regional, or state perspective pursuant to Rule Env-Wt 101.90
7. The applicant has reviewed on-site options for mitigation and the department has determined that this project is acceptable for payment to the Aquatic Resource Mitigation (ARM) Fund.
8. The payment calculated for the proposed wetland loss equals $150,000.
9. The Department decision is issued in letter form and upon receipt of the ARM fund payment, the Department shall issue a posting permit in accordance with Env-Wt 803.08(f).
10. The payment into the ARM fund shall be deposited in the DES fund for the Pemigewasset River Watershed per RSA 482-A:29.

ALTERATION OF TERRAIN (AoT) BUREAU FINAL DECISION
OCTOBER 8, 2010

RECOMMEND APPROVAL WITH THE FOLLOWING PERMIT CONDITIONS:
(Approval includes permit conditions from the Watershed Management Bureau (WMB) to satisfy 401 Water Quality Certification concerns, and from the Drinking Water and Groundwater Bureau (DWGB) to satisfy concerns regarding ledge blasting and monitoring Best Management Practices)

PROJECT DESCRIPTION:
Construct a power generating wind park that will include the construction of 24 wind turbines (2.0 megawatts each), approximately 12 miles of gravel access drives, a 4,000 square foot operations and maintenance building, stockpile and lay down pad areas, and associated transmission lines. The total area of contiguous disturbance has been calculated to be 115.6 acres (5,036,579 square feet).

PROJECT SPECIFIC CONDITIONS:
1. Activities shall not cause or contribute to any violations of the surface water quality standards established in Administrative Rule Env-Wq 1700.
2. Revised plans shall be submitted for an amendment approval prior to any changes in construction details or sequences. The Department must be notified in writing within ten days of a change in ownership.
3. The Department must be notified in writing prior to the start of construction and upon completion of construction. Forms are available at: http://des.nh.gov/organization/divisions/water/aot/categories/forms.htm.
4. The revised plans dated July 9, 2010 and supporting documentation in the file are a part of this approval.
5. No construction activities shall occur on the project after expiration of the approval unless the approval has been extended by the New Hampshire Energy Facility Site Evaluation Committee (SEC).
6. This permit does not relieve the Applicant from the obligation to obtain other local, state or federal permits that may be required (e.g., from US EPA, US Army Corps of Engineers, etc.). Projects disturbing over 1 acre may require a federal stormwater permit from EPA. Information regarding this permitting process can be obtained at: http://des.nh.gov/organization/divisions/water/stormwater/construction.htm.
7. The smallest practical area shall be disturbed during construction activities.
8. The Applicant shall employ the services of an environmental monitor ("Monitor"). The Monitor shall be a Certified Professional in Erosion and Sediment Control or a Professional Engineer licensed in the State of New Hampshire and shall be employed to inspect the site from the start of alteration of terrain activities until the alteration of terrain activities are completed.
9. The Monitor shall provide technical assistance and recommendations to the Contractor on the appropriate Best Management Practices for Erosion and Sediment Controls required to meet the requirements of RSA 485-A:17 and all applicable DES permit conditions.
10. Prior to beginning construction, the contractor's name, address, and phone number shall be submitted to DES via email (to Denise Frappier at denise.frappier@des.nh.gov and to Craig Rennie at: craig.rennie@des.nh.gov).

11. Unless otherwise authorized by DES, the Applicant shall keep a sufficient quantity of erosion control supplies on the site at all times during construction to facilitate an expeditious (i.e., within 24 hour) response to any construction related erosion issues on the site.
12. The Applicant shall develop and submit a Construction BMP Inspection and Maintenance Plan to DES for approval at least 90 days prior to construction. Unless otherwise authorized by DES, the plan shall incorporate all elements described in **Appendix A** (items A through J). The Applicant shall then implement the approved plan.
13. The Applicant shall prepare a turbidity sampling plan as specified in **Appendix A** of this permit. The plan shall be submitted to DES for approval at least 90 days prior to construction. The Applicant shall then implement the approved plan. Unless otherwise authorized by DES, the turbidity sampling results along with station ID, date, time, other field notes, and a description of corrective actions taken when violations of state surface water quality criteria for turbidity are found, shall be submitted to DES via electronic mail within 48 hours of collection
14. The Applicant shall prepare and submit a Spill Prevention, Control, and Countermeasures plan (SPCC) for the Activity in accordance with federal regulations (40 CFR part 112). The plan shall include a certification by a Professional Engineer licensed in the State of New Hampshire. The Applicant shall submit the plan to DES Watershed Management Bureau for review and approval at least 90 days prior to the installation of the first turbine. The SPCC Plan shall include, but not be limited to, operating procedures to prevent oil spills, control measures installed to prevent oil from entering surface waters, countermeasures to contain, clean-up and mitigate the effects of an oil spill, and facility inspections. The Applicant shall then implement the approved plan and maintain records demonstrating compliance with the plan. Such records shall be made available to DES within 30 days of receiving a written request by DES.
15. The Applicant shall submit a plan to prevent water quality violations due to discharges of concrete wash water during construction. The Applicant shall submit the plan to DES Watershed Management Bureau for review and approval at least 90 days prior to placement of any concrete within the Activity area. The Applicant shall then implement the approved plan.
16. As proposed by the Applicant, unless otherwise authorized by DES, herbicides and pesticides shall not be used on the site for the construction or operation of the Activity.
17. Unless otherwise authorized by DES, fertilizers shall only be applied once on soils disturbed during construction to support the initial establishment of vegetation. Prior to fertilizer application, soils shall be tested to determine the minimum amounts of lime, nitrogen (N), phosphorus (P) and potassium (K) needed to support vegetation. Lime application rates, fertilizer selection (in terms of N, P and K content) and fertilizer application rates shall be consistent with the soil test results. Fertilizers shall not contain any pesticides. Where possible, fertilizer with slow release nitrogen shall be used. Soil test results, the name, brand and nutrient content (N, P and K) of fertilizer and application rates for lime and fertilizer shall be provided to DES within 30 days of receiving a request from DES. As proposed by the Applicant, unless otherwise authorized by DES, no fertilizers shall be used for the Activity following construction.
18. As proposed by the Applicant, unless otherwise authorized by DES, no de-icing agents (including use of sands containing chloride) shall be used on the Activity either during construction or once the Activity is in operation.
19. Unless otherwise authorized by DES, the Applicant shall limit forest clearing within a 50-foot buffer of Clark Brook to 0.2 acres (<1% change from pre-Activity conditions) and within a 50-foot buffer of all perennial streams to 3.6 acres (5% change from pre-Activity conditions).
20. Unless otherwise authorized by DES, the Applicant shall develop and submit a monitoring plan to DES for approval at least 90 days prior to construction. The purpose of the plan is to confirm

that operation of the Activity is not causing or contributing to violations of state surface water quality standards. The plan shall include the parameters to be sampled, the location, timing and frequency of sampling, sampling and laboratory protocols, quality assurance/quality control provisions as well as when data will be submitted to DES. The Applicant shall consult with DES and submit the monitoring data in a format that can be automatically uploaded into the DES Environmental Database. Once approved by DES, the Applicant shall implement the sampling plan.

21. The Applicant shall identify drinking water wells located within 2000 feet of the proposed blasting activities. Develop and implement a groundwater quality sampling program to monitor for nitrate and nitrite either in the drinking water supply wells or in other wells that are representative of the drinking water supply wells in the area. The program must be approved by the DES DWGB.
22. The following Best Management Procedures for blasting shall be complied with:
    (1) Loading practices. The following blasthole loading practices to minimize environmental effects shall be followed:
        a) Drilling logs shall be maintained by the driller and communicated directly to the blaster. The logs shall indicate depths and lengths of voids, cavities, and fault zones or other weak zones encountered as well as groundwater conditions.
        b) Explosive products shall be managed on-site so that they are either used in the borehole, returned to the delivery vehicle, or placed in secure containers for off-site disposal.
        c) Spillage around the borehole shall either be placed in the borehole or cleaned up and returned to an appropriate vehicle for handling or placement in secured containers for off-site disposal.
        d) Loaded explosives shall be detonated as soon as possible and shall not be left in the blastholes overnight, unless weather or other safety concerns reasonably dictate that detonation should be postponed.
        e) Loading equipment shall be cleaned in an area where wastewater can be properly contained and handled in a manner that prevents release of contaminants to the environment.
        f) Explosives shall be loaded to maintain good continuity in the column load to promote complete detonation. Industry accepted loading practices for priming, stemming, decking and column rise need to be attended to.
    (2) Explosive Selection. The following BMPs shall be followed to reduce the potential for groundwater contamination when explosives are used:
        a) Explosive products shall be selected that are appropriate for site conditions and safe blast execution.
        b) Explosive products shall be selected that have the appropriate water resistance for the site conditions present to minimize the potential for hazardous effect of the product upon groundwater.
    (3) Prevention of Misfires. Appropriate practices shall be developed and implemented to prevent misfires.
    (4) Muck Pile Management. Muck piles (the blasted pieces of rock) and rock piles shall be managed in a manner to reduce the potential for contamination by implementing the following measures:
        a) Remove the muck pile from the blast area as soon as reasonably possible.
        b) Manage the interaction of blasted rock piles and stormwater to prevent contamination of water supply wells or surface water.

(5) Spill Prevention Measures and Spill Mitigation. Spill prevention and spill mitigation measures shall be implemented to prevent the release of fuel and other related substances to the environment. The measures shall include at a minimum:

a) The fuel storage requirements shall include:
   i. Storage of regulated substances on an impervious surface;
   ii. Secure storage areas against unauthorized entry;
   iii. Label regulated containers clearly and visibly;
   iv. Inspect storage areas weekly;
   v. Cover regulated containers in outside storage areas;
   vi. Wherever possible, keep regulated containers that are stored outside more than 50 feet from surface water and storm drains, 75 feet from private wells, and 400 feet from public wells; and
   vii. Secondary containment is required for containers containing regulated substances stored outside, except for on premise use heating fuel tanks, or aboveground or underground storage tanks otherwise regulated.

b) The fuel handling requirements shall include:
   i. Except when in use, keep containers containing regulated substances closed and sealed;
   ii. Place drip pans under spigots, valves, and pumps;
   iii. Have spill control and containment equipment readily available in all work areas;
   iv. Use funnels and drip pans when transferring regulated substances; and
   v. Perform transfers of regulated substances over an impervious surface.

c) The training of on-site employees and the on-site posting of release response information describing what to do in the event of a spill of regulated substances.

d) Fueling and maintenance of excavation, earthmoving and other construction related equipment will comply with the regulations of the DES. Note these requirements are summarized in "WD-DWGB-22-6 Best Management Practices for Fueling and Maintenance of Excavation and Earthmoving Equipment" or its successor document (see http://des.nh.gov/organization/commissioner/pip/factsheets/dwgb/documents/dwgb-22-6.pdf).

Appendix A:

Details of construction BMP inspection, reporting requirements, and turbidity monitoring

(In light of the sensitive resources within the project area and scale of the proposed activity, the following additional construction BMP inspection and reporting requirements and turbidity monitoring are considered necessary to prevent construction related surface water quality violations)

A. Weekly Erosion Control Meeting: The Applicant's prime Contractor for the Activity (prime Contractor) shall hold weekly erosion control meetings with the Monitor. Minutes of the meeting shall be kept on file and made available to DES upon request.

B. Inspection Frequency: Regular inspections shall be conducted as specified below for the purposes of determining compliance with the permit.

(1) Daily Inspections: The prime Contractor shall inspect all erosion control measures every day that work is conducted from the time construction commences and earth is disturbed until construction is complete.

(2) Weekly Inspections: After construction has commenced and earth has been disturbed, the Monitor shall conduct weekly erosion control site inspections to verify all erosion control measures are maintained properly to protect surface waters and wetlands. The Monitor shall document and report its findings, including recommendations for maintenance of BMPs or the addition of new control measures to the prime Contractor.

(3) Pre-storm inspections: The Monitor shall print the 5-day forecast once daily (7-9 am) for the duration of the project. All forecasts shall be clearly marked with the date and time, kept on file, provided to the prime Contractor. In addition, the 5-day forecast on the day of the weekly meeting shall be attached to the weekly meeting minutes distributed by the Monitor. Inspection shall occur within 24 hours prior to the start of any rain event of 0.5 inches or more in a 24-hour period that is predicted to occur during the workweek. A normal workweek is Monday through Friday. Holidays and weekends are included as part of the normal workweek when work is anticipated to occur on those days. If the predicted event occurs outside of the normal workweek, the inspection shall occur on the normal workday just before any scheduled days off, such as holidays and weekends. Unless otherwise approved by DES, the Accuweather website (http://home.accuweather.com/index.asp?partner=accuweather) shall be used for the purpose of predicting future precipitation amounts. Future precipitation amounts on the Accuweather web site may be determined by typing in the location of the project (city, state and/or zip code), clicking on the link for Days 1-5 forecasts and then clicking on the day(s) of interest.

C. Emergency Inspections During Storm Events: Inspections shall occur during the daylight hours (Monday through Sunday, including holidays) during storm events whenever plumes are visible or if turbidity sampling indicates water quality standards are exceeded due to turbid stormwater from the construction site. Inspections and corrective action shall be implemented during the daylight hours (Monday through Sunday, including holidays) until turbidity water quality standards are met.

D. Post Storm Inspections: Inspections shall occur on the first workday following storms of greater than 0.5 inches in a 24-hour period. Precipitation amounts shall be based on precipitation recorded at a rain gauge installed at the construction site or other approved method. Inspections and corrective action shall be implemented during the daylight hours (Monday through Sunday, including holidays) until turbidity water quality standards are met.

E. Winter Shutdown Inspections: Inspections during winter shut down shall occur as specified in the NPDES General Permit for Stormwater Discharges from Construction Activities (commonly known as the Construction General Permit)]

F. Provisions for Handling Emergencies: Contact information shall be provided to DES for at least two people that DES can contact at any time regarding construction related stormwater concerns. The Applicant shall prepare an Emergency Procedures Plan describing procedures to address and correct emergency, construction related stormwater issues in an expeditious manner. The plan shall include the responsibilities of key individuals, the availability of equipment, and the availability of erosion control and BMP supplies. All emergency erosion control and BMP supplies must be kept on-site.

G. Inspection and Maintenance Plans and Reports: Written inspection and maintenance reports shall include the items stipulated in the EPA NPDES General Permit for Stormwater Discharges from Construction Activities, as well as the predicted 24-hour rainfall for pre-storm inspection reports, measured rainfall amounts for post-inspection reports. The reports shall also indicate if erosion control measures "pass" or "fail" , if the project is being constructed in accordance with the approved sequence, identify any deviation from the conditions of this permit and the approved plans, and identify any other noted deficiencies and include photographic documentation. Unless otherwise authorized by DES, within 24 hours of each inspection, the Monitor shall submit a report with photographic documentation to DES via email (to Denise Frappier at denise.frappier@des.nh.gov and to Craig Rennie at: craig.rennie@des.nh.gov).

H. Weather Station Specifications: Unless otherwise authorized by DES, the Applicant shall be responsible for maintaining a weather station that can measure rainfall to an accuracy of 0.01 inches, monitor temperature to an accuracy of 1 degree Fahrenheit or Celsius, and has hourly data storage and download capabilities.

I. Precipitation Notification Plan: The Applicant shall specify how the Monitor, and others, will be notified when precipitation has occurred that will trigger the need for inspections and/or turbidity sampling. Automatic notification is preferred. If considered necessary and feasible by DES, the weather station shall be equipped to send automatic email notifications to notify the Monitor when construction BMP inspections and/or turbidity sampling is necessary. Should automated email notification be considered necessary, it shall be capable of the following: Start of rain event: Once 0.25 inches of rain or rain-mix precipitation has been measured an automated email notification will be sent to the prime Contractor, the Monitor, and any other interested parties. The email shall provide hourly rainfall, and time of rainfall for the previous 24 hours. End of rain event: Once six hours without rain or rain-mix precipitation has passed an automated email notification will be sent to the prime Contractor, the Monitor and DES. The email shall provide hourly rainfall and time of rainfall from the start of the rain event to the end of the rain event, including the six hour "dry" period.

J. Turbidity Monitoring: To confirm that construction best management practices (BMPs) for controlling erosion are performing as intended, turbidity monitoring is needed. Unless otherwise authorized by DES, the Applicant shall submit a Turbidity Sampling Plan that includes the turbidity monitoring elements specified in the February 2, 2009 DES Inter-Department Communication entitled "Amendment of the November 16, 2006 Guidance for BMP Inspection and Maintenance and Turbidity Sampling and Analysis Plans for I-93 Expansion Project Water Quality Certification". This document includes guidance regarding sampling station number and locations, sampling frequency, sampling duration, size of storms that need to be sampled, how soon after the start of precipitation sampling should begin, quality assurance quality control provisions, and turbidity meter specifications.

The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

Greg Penta
Regulatory Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

WATER QUALITY CERTIFICATION

In Fulfillment of

Section 401 of the United States Clean Water Act (33 U.S.C 1341)

WQC # 2007-003

Activity Name	New Hampshire State Programmatic General Permit
Activity Location	State of New Hampshire
Owner/Applicant	Regulatory Division U.S. Army Corps of Engineers 696 Virginia Road Concord, MA 01742-2751
DATE OF APPROVAL (subject to Conditions below)	May 30, 2007

A. INTRODUCTION

The U.S. Army Corps of Engineers New England District (Applicant) seeks a Clean Water Act (CWA) Section 401 Water Quality Certification (Certification) from the New Hampshire Department of Environmental Services (DES) for the New Hampshire Programmatic General Permit (PGP). The PGP is a statewide permit, which will be issued by the Applicant pursuant to 33 CFR 325.5(c)(3), for minimal-impact activities within the State of New Hampshire. The intent of the PGP is to simplify the permit application review processes of the Applicant and DES Wetlands Bureau, as the permit review processes are nearly parallel relative to federal and state statutory authority. The new PGP will become effective June 2, 2007 and will subsequently expire on June 2, 2012. The current PGP expires June 2, 2007.

This 401 Certification documents laws, regulations, determinations and conditions related to the PGP for the attainment and maintenance of NH surface water quality standards, including the provisions of NH RSA 485-A:8 and NH Code of Administrative Rules Env-Ws 1700, for the support of designated uses identified in the standards.

B. WATER QUALITY CERTIFICATION APPROVAL

Based on the findings and conditions noted below, the New Hampshire Department of Environmental Services (DES) has determined that any discharge associated with the Activity will not violate surface water quality standards, or cause additional degradation in surface waters not presently meeting water quality standards. DES hereby issues this 401 Certification subject to the conditions defined in Section E of this 401 Certification, in accordance with Section 401 of the United States Clean Water Act (33 U.S.C. 1341).

C. STATEMENT OF FACTS AND LAW

C-1. Section 401 of the United States Clean Water Act (CWA, 33 U.S.C. 1341) states, in part: "Any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate...that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title.....No license or permit shall be granted until the certification required by this section has been obtained or has been waived...No license or permit shall be granted if certification has been denied by the State..."

C-2. Section 401 further states, in part "Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations...and shall become a condition on any Federal license or permit subject to the provisions of this section."

C-3. RSA 485-A:8 and Env-Ws 1700 (Surface Water Quality Regulations, effective December 3, 1999) together fulfill the requirements of Section 303 of the Clean Water Act that the State of New Hampshire adopt water quality standards consistent with the provisions of CWA. Further, RSA 485-A:8 establishes two classes or grades of surface waters in New Hampshire for the purposes of classification: Class A and Class B.

C-4. Env-Ws 1700 provides narrative water quality standards and numeric water quality criteria. Among other purposes, Env-Ws 1700 is used by DES for evaluating applications for 401 Water Quality Certification.

C-5. Env-Ws 1701.02, entitled "Applicability", states that:

a. These rules shall apply to all surface waters.

b. These rules shall apply to any person who causes point or nonpoint source discharge(s) of pollutants to surface waters, or who undertakes hydrologic modifications, such as dam construction or water withdrawals, or who

undertakes any other activity that affects the beneficial uses or the level of water quality of surface waters."

C-6. Env-Ws 1702.18 defines a discharge as:

a. The addition, introduction, leaking, spilling, or emitting of a pollutant to surface waters, either directly or indirectly through the groundwater, whether done intentionally, unintentionally, negligently, or otherwise; or

b. The placing of a pollutant in a location where the pollutant is likely to enter surface waters."

C-7. Env-Ws 1702.39 defines a pollutant as: "pollutant" as defined in 40 CFR 122.2. This means "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water."

C-8. Env-Ws 1702.46 defines surface waters as "perennial and seasonal streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial," and waters of the United States as defined in 40 CFR 122.2."

C-9. Surface waters are navigable waters for the purposes of certification under Section 401 of the Clean Water Act. Surface waters are jurisdictional wetlands for the purposes of wetlands permitting under RSA 482-A.

C-10. The named and unnamed surface waters, including rivers and streams, lakes and ponds, and wetlands, in New Hampshire, potentially affected by activities permitted under the PGP, are surface waters under Env-Ws 1702.46.

C-11. Env-Ws 1703.01 (c) states that "All surface waters shall provide, wherever attainable, for the protection and propagation of fish, shellfish and wildlife, and for recreation in and on the surface waters."

C-12. Env-Ws 1703.19, entitled "Biological and Aquatic Community Integrity", states that

a. The surface waters shall support and maintain a balanced, integrated and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region; and

b. Differences from naturally occurring conditions shall be limited to non-detrimental differences in community structure and function."

C-13. Env-Ws 1703.21 (a)(1) states that "Unless naturally occurring or allowed under part Env-Ws 1707, all surface waters shall be free from toxic substances or chemical constituents in concentrations or combinations that injure or are inimical to plants, animals, humans or aquatic life."

C-14. The PGP is a federal wetlands permit under the federal Clean Water Act Section 404.

C-15. The Applicant provided public notice for the PGP on March 12, 2007 and subsequently on April 3, 2007. The public notice included a draft PGP and a request for public comments. DES Watershed Management Bureau provided written comments by letter dated April 23, 2007.

C-16. The Applicant is responsible for the development and implementation of the PGP, including any amendments.

D. FINDINGS

D-1. The PGP reviewed for this 401 Certification is the draft PGP developed by the Applicant, as described in the public notice dated April 3, 2007and in subsequent correspondence with the Applicant

D-2. The PGP is a federal permit, which requires water quality certification under Section 401 of the federal Clean Water Act.

D-3. Activities permitted under the PGP may result in a discharge and may cause permanent or temporary impacts to surface waters in New Hampshire.

D-4. The Applicant consulted private and public entities, including the DES Wetlands Bureau during the development of the PGP.

D-5. The PGP will be issued for projects that include dredge and fill of wetlands. DES Wetlands Bureau permitting process addresses dredge and fill impacts to jurisdictional wetlands. The 401 Certification decision relies, in part, on an approved permit from the DES Wetlands Bureau for the potential construction and post construction-related impacts to jurisdictional wetlands and other affected surface waters.

D-6. Projects that include dredge and fill of wetlands under the PGP may also include temporary or permanent impacts to surface hydrologic conditions, such as peak runoff. DES Alteration of Terrain permitting process addresses impacts to surface hydrological conditions. The 401 Certification decision relies, in part, on an approved permit from the DES Alteration of Terrain Program for the potential construction and operation-related impacts to surface hydrology.

D-7. DES periodically reviews wetlands permit applications for projects included under the PGP to determine whether additional conditions or an individual 401 Certification application is necessary.

D-8. Most projects included under the PGP, if conducted in accordance with the conditions of the PGP, DES Wetlands Permit, and DES Alteration of Terrain Permit are not expected to cause or contribute to violations of water quality standards.

E. WATER QUALITY CERTIFICATION CONDITIONS

E-1. Construction or operation of all projects included under the PGP shall meet NH surface water quality standards.

E-2. Applications for projects included under the PGP shall be subject to DES review to determine whether additional conditions or an individual 401 Certification application is necessary to ensure compliance with surface water quality standards.

E-3. If DES determines that surface water quality standards are being violated by the specific project or there is reasonable potential to expectthat water quality standards will be violated if more project specific conditions are not included in the 401 Certification, DES may modify this 401 Certification for the specific project to include additional conditions to ensure compliance with surfacewater quality standards, when authorized by law, and after notice and opportunity for hearing.

E-4. Construction on any specific project permitted under the PGP shall not commence until all other applicable permits and approvals have been granted, including those permits issued through DES Wetlands Bureau and, if necessary, DES Alteration of Terrain Program.

E-5. All applicable conditions in the NH PGP shall be followed.

E-6. DES reserves the right to inspect any project permitted under the PGP and the effects of the project on affected surface waters at any time to monitor compliance with the NH surface water quality standards.

F. APPEAL

If you are aggrieved by this decision, you may appeal the decision to the Water Council. Any appeal must be filed within 30 days ofthe date of this decision, and must conform to the requirements of Env-WC 200. Inquiries regarding appeal procedures should be directed to Michael Sclafani, DES Council Appeals Clerk, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095; telephone 603-271-6072.

If you have questions regarding this 401 Certification, please contact Paul Piszczek at (603) 271-2471.

Harry T. Stewart, P.E.
Director, Water Division

cc: Frank Delguidice, U.S. Army Corps of Engineers
Collis Adams, DES Wetlands Bureau
Paul Piszczek, DES Watershed Management Bureau
Chris Williams, DES Watershed Management Bureau (Coastal Consistency Program)
Dan Lynch, NH Fish and Game Department
Ralph Abele, U.S. Environmental Protection Agency
Michael Bartlett, U.S. Fish and Wildlife Service

APPENDIX II – TOWN OF GROTON AGREEMENT

EXHIBIT
tabbies
App. 32

AGREEMENT BETWEEN TOWN OF GROTON AND GROTON WIND, LLC, DEVELOPER/OWNER OF THE GROTON WIND POWER PROJECT

1. Definitions

1.1. "Agreement" - This agreement between the Town of Groton, New Hampshire and Groton Wind LLC, and its successors and assigns, which shall apply for the life of the Groton Wind Farm.

1.2. "Ambient Sound Pressure" - The sound pressure level excluded from that contributed by the operation of the Wind Farm.

1.3. "Decommissioning Funding Assurance" – An assurance provided by the Owner in a form acceptable to the Town that guarantees completion of decommissioning, as provided in this Agreement.

1.4. "End of Useful Life" - The Wind Farm or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated for a continuous period of twenty-four months for reasons other than the wind regime, maintenance or some technical failure or repair, or for wind farm repowering or facility upgrades or equipment replacements.

1.5. "Non-Participating Landowner" - Any landowner in the Town of Groton, other than a Participating Landowner.

1.6. "Owner" - The entity or entities having equity interest in the Wind Farm, including their respective successors and assigns.

1.7. "Occupied Building" - A permanent structure used as a year-round or seasonal residence, school, hospital, church, public library or other building used for gathering that is occupied or in use as of the time that the permit application was submitted to the New Hampshire Site Evaluation Committee.

1.8. "Participating Landowner" – Any landowner having entered into an agreement with the Owner for hosting Wind Farm facilities, providing easements for access, entry or conveyance of other rights related to the Wind Farm, or any other agreement related to the construction or operation of the Wind Farm.

1.9. "Project Site" – Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Farm.

1.10. "Town" – Town of Groton, New Hampshire.

1.11. "Turbine Height" - The distance from the surface of the tower foundation to the tip of the uppermost blade when in a vertical position. For the Groton Wind Power Project, this height is approximately 399 feet.

1.12. "Wind Turbine" - A wind energy conversion system that converts wind energy for the generation of electricity, including a tower, a nacelle housing the generator and transformer, and a 3-blade rotor.

1.13. "Wind Farm" - The totality of the Wind Turbines, cables, accessory buildings and structures including substations, meteorological towers, electric infrastructure and cables and other appurtenant structures and facilities that comprise the Groton Wind Power Project under development by Owner.

2. General Provisions

2.1. **Enforceability.** This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Farm or any Wind Turbines after the End of Useful Life.

2.2. **Applicability to Owner.** This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Farm and Project Site as conferred to Owner by Participating Landowner agreements.

2.3. **Recording.**

2.3.1. Owner shall submit to the Town evidence of all Participating Landowner agreements, which may take the form of memoranda recorded with the Grafton County Registry of Deeds.

2.3.2. This Agreement shall be recorded at the Grafton County Registry of Deeds.

2.4. **Survivability.** The invalidity of any section, portion, or paragraph of this Agreement will not affect any other section, portion, or paragraph in this Agreement.

2.5. **Limitation on Turbines.** This Agreement is for the installation and operation of a Wind Farm of up to twenty-four turbines, consistent with the size and configuration approved by the New Hampshire Site Evaluation Committee (NHSEC). Communications or other equipment attached to the Wind Turbines shall be limited to that incidental and necessary for the safe and efficient operation, maintenance, and interconnection of the Wind Farm.

2.6. **On-site Burning.** The Owner will obtain a permit from the Town of Groton, and the Town of Rumney Fire Department if necessary, and comply with all State requirements before Owner or its agents perform any on-site burning.

2.7. **Warnings.**

2.7.1. A clearly visible warning sign concerning voltage must be placed at the base of all above-ground electrical collection facilities, switching or interconnection facilities, and substations.

2.7.2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on all anchor points of guy wires, if any, and along the guy wires up to a height of ten feet from the ground.

2.7.3. A clearly visible warning sign concerning safety risks related to winter or storm conditions shall be placed no less than 500 feet from each Wind Turbine tower base on access roads

2.8. **Access.** The Town shall have access to all gated entrances to the Project Site for the purpose of emergency response. The Owner shall provide to the Town keys, combination codes, and/or remote control devices for opening project gates. Such keys or access devices may not be provided by the Town to anyone other than members of the Board of Selectmen, Police Department, Groton Fire Chief or Highway Department while engaged in official duties. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon reasonable request of the Town for the purpose of building or safety inspections under Town ordinances. The Owner shall provide access for emergency response purposes pursuant to the protocols provided under Section 7 of this Agreement. The Owner shall coordinate agreements with responding town emergency services (Town of Rumney Police Department and Fire Department) and ensure access for those responder departments.

2.9. **Liability Insurance.** There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least $10 million in the aggregate. Certificates shall be made available to the Town upon request.

2.10. **Indemnification.** The Owner specifically and expressly agrees to indemnify, defend, and hold harmless the Town and its officers, elected officials, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of any negligence or wrongful acts of the Owner, its employees, agents, representatives or subcontractors of any tier, their employees, agents or representatives in connection with the Wind Farm. The indemnity obligations under this Article shall include without limitation:

2.10.1. Loss of or damage to any property of the Town or any third party or, to the extent that loss of or damage to property of Owner, results in a third party claim against the Town, loss of or damage to any property of Owner;

2.10.2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its subcontractors of any tier.

The Owner's indemnity obligation under this Article shall not extend to any liability caused by the negligence or willful misconduct of any of the Indemnitees, or third parties outside its control.

2.11. **Reopener Clause.** Upon agreement of both parties to this agreement, this agreement or portions thereof may be revised or amended.

3. Wind Turbine Equipment and Facilities

3.1. **Visual Appearance.**

3.1.1. Wind Turbines shall be painted and lighted in accordance with Federal Aviation Administration (FAA) regulations. Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or any other applicable authority that regulates air safety.

3.1.2. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer and/or Owner.

3.2. **Controls and Brakes.** All Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

3.3. **Electrical Components.** All electrical components of the Wind Farm shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.

3.4. **Power Lines.** On-site distribution, transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

4. Project Site Security

4.1. Wind Turbines exteriors shall not be climbable up to fifteen (15) feet above ground surface.

4.2. All access doors to Wind Turbines and electrical equipment shall be locked, fenced, or both, as appropriate, to prevent entry by non-authorized persons.

4.3. Entrances to the Project Site shall be gated, and locked during non-working hours. If problems with unauthorized access are identified, the Project shall work to implement additional security measures.

5. Public Information, Communications and Complaints

5.1. **Public Inquiries and Complaints.** During construction and operation of the Wind Farm, and continuing through completion of decommissioning of the Wind Farm, the Owner shall identify an individual(s), including phone number, email address, and mailing address, posted at the Town House, who will be available for the public to contact with inquiries and complaints. The Owner shall make

reasonable efforts to respond to and address the public's inquiries and complaints. This process shall not preclude the local government from acting on a complaint.

5.2. **Signs.** Signs shall be reasonably sized and limited to those necessary to identify the Project Site and provide warnings or liability information, construction information, or identification of private property. There will be no signs placed in the public right of way without the prior approval of the Town. After the completion of construction, signs visible from public roads shall be unlit and be no larger than twelve square feet, unless otherwise approved by the Town.

6. **Reports to the Town of Groton**

6.1. **Incident Reports.** The Owner shall provide the following to the Chairman of the Board of Selectmen or his designee as soon as possible:

6.1.1. Copies of all reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency

6.2 **Periodic Reports.** The owner shall submit, on an annual basis starting one year from commercial operation of the Wind Farm, a report to the Board of Selectmen of the Town of Groton, providing, at a minimum, the following information:

6.2.1 If applicable, status of any additional construction activities, including schedule for completion;

6.2.2 Details on any calls for emergency police or fire assistance;

6.2.3 Location of all on-site fire suppression equipment; and

6.2.4 Identity of hazardous materials, including volumes and locations, as reported to state or federal agencies.

6.2.5 Summary of any complaints received from Town of Groton residents, and the current status or resolution of such complaints or issues.

7. **Emergency Response**

7.1. Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Farm through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Farm. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town, including provisions for access to the Project Site, Wind Turbines or other facilities within 30 minutes of

an alarm or other request for emergency response, and provisions that provide the Town with contact information of personnel available at every hour of the day. The Owner shall coordinate with the Town of Rumney or other jurisdictions as necessary on emergency response provisions.

7.2. The Owner shall cooperate with the Town's emergency services to determine the need for the purchase of any equipment required to provide an adequate response to an emergency at the Wind Farm that would not otherwise need to be purchased by the Town. If agreed between the Town and Owner, Owner shall purchase any specialized equipment for storage at the Project Site. The Town and Owner shall review together on an annual basis the equipment requirements for emergency response at the Wind Farm.

7.3. The Owner shall maintain fire alarm systems, sensor systems and fire suppression equipment that is installed in all Wind Turbines and facilities.

7.4. In the event of an emergency response event that creates an extraordinary expense (expenses beyond what the Town would otherwise incur in responding to an emergency response event for a resident of the Town) for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for actual expenses incurred by the Town.

7.5. In the event that the Town of Groton establishes a Fire Department, the Owner and Town will work to determine whether direct reimbursement for emergency response by the Town is appropriate and will negotiate an addendum to this agreement to address Town of Groton fire response.

8. Roads

8.1. Public Roads

8.1.1. In the event that the Owner wishes to utilize Town of Groton roads for construction or operation of the Wind Farm (use for oversize or overweight vehicles, and/or use during posted weight limit time periods), then the Owner shall follow the below procedures:

8.1.2. Identify all local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.

8.1.3. The Owner shall hire a qualified professional engineer, as mutually agreed with the Town, to document local road conditions prior to construction and again thirty days after construction is completed or as weather permits.

8.1.4. Any local road damage caused directly by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense.

8.1.5. The Owner will reimburse the Town for costs associated with special police details, when contracted by Owner or their representatives if required to direct or monitor traffic within the Town limits during construction.

8.1.6. The Owner shall demonstrate by financial guarantee of the Owner or its parent or affiliates, that it will provide appropriate financial assurance to ensure prompt repair of damaged roads. If such financial assurance is not provided in a form acceptable to the Town, the Town may require a bond or cash deposit to meet this obligation.

8.2. **Wind Farm Access Roads**

8.2.1. The Owner shall construct and maintain roads at the Wind Farm that allow for year-round access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles.

8.2.2. Any use of Town of Groton public ways that is beyond what is necessary to service the Wind Farm or that are beyond the scope of Participating Landowner agreement(s) shall be subject to approvals under relevant Town ordinances or regulations, or state or federal laws.

9. Construction Period Requirements

9.1. **Site Plan.** Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final Soil Erosion and Sediment Control site plans, as approved by the New Hampshire SEC and Department of Environmental Services (DES) showing the construction layout of the Wind Farm.

9.2. **Construction Schedule.** Prior to the commencement of construction activities at the Wind Farm, the Owner shall provide the Town with a schedule for construction activities, including anticipated use of public roads for the transport of oversize and overweight vehicles. The Owner shall provide updated information and schedules regarding construction activities to the Town upon request of the Town.

9.3. **Disposal of Construction Debris.** Tree stumps, slash and brush will be disposed of onsite or removed consistent with state law. Construction debris and stumps shall not be disposed of at Town facilities.

9.4. **Blasting.** The handling, storage, sale, transportation and use of explosive materials shall conform to all state and federal rules and regulations. In addition, the Owner shall comply with the following Town requirements.

9.4.1. At least ten days before blasting commences, the Owner shall brief Town officials on the blasting plan. The briefing shall include the necessity of blasting and the safeguards that will be in place to ensure that building foundations, wells or other structures will not be damaged by the blasting.

9.4.2. In accordance with the rules of the State of New Hampshire, the Owner shall notify the Groton and Rumney police and fire chiefs before blasting commences. Any changes to the schedule for blasting must be reported immediately and in person to the police and fire chiefs.

9.4.3. A Pre-Blast Survey will be performed to cover residents within 500 ft. of the work area, and a copy of the survey will be recorded in the Town office. Residents within 500 feet will be notified in person whenever possible, or by registered mail, prior to work in the area.

9.4.4. A copy of the appropriate Insurance Policy and Blasting License will be recorded in the Town office.

9.5. **Storm Water Pollution Control.** The Owner shall obtain a New Hampshire Site-Specific Permit and conform to all of its requirements including the Storm Water Pollution Prevention Plan and requirements for inspections as included or referenced therein. The Owner shall provide the Town with a copy of all state and federal stormwater, wetlands, or water quality permits and related conditions.

9.6. **Design Safety Certification.** The design of the Wind Farm shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanishcer Lloyd Wind Energies, or other similar certifying organizations.

9.7. **Construction Vehicles**

9.7.1. Construction vehicles shall only use a route approved by the Town. There shall be no staging or idling of vehicles on public roads. The Town shall be notified at least 24 hours before each construction vehicle with a Gross Vehicle Weight greater than 88,000 pounds is to use a Town road. Acceptance by the Town of vehicles exceeding this level is not a waiver of the Owner's obligation to repair all damage to roadways caused by vehicles used during construction or during any other time through the completion of decommissioning.

9.7.2. Construction vehicles will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday, unless prior approval is obtained from the Town. Construction vehicles will not travel on Town roads on Sunday, unless prior approval is obtained from the Town.

9.7.3. Construction will only be conducted between 6:00 am and 7:00 pm, Monday – Saturday, unless prior approval is obtained from the Town. Construction will not be conducted on Sundays, unless prior approval is obtained from the Town.

9.7.4. The start-up and idling of trucks and equipment will conform to all applicable Department of Transportation regulations. In addition, the start-up and idling of trucks and equipment will only be conducted between 5:30 am and 7:00 pm, Monday through Saturday.

9.7.5. Notwithstanding anything in this Agreement to the contrary, upon prior approval of the Town, over-sized vehicles delivering equipment and supplies may travel on Town roads between the hours of 7:00 pm and 6:00

am and on Sundays in order to minimize potential disruptions to area roads.

10. Operating Period Requirements

10.1. **Spill Protection.** The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances used during the construction and operation of the Wind Farm. This includes, without limitation, oil and oil-based products, gasoline, and other hazardous substances from construction related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with a copy of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Farm as required by state or federal agencies.

10.2. **Pesticides and Herbicides.** The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Farm.

10.3. **Signal Interference.** The Owner shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television, or similar signals, and shall take commercially reasonable measures to mitigate any harm caused by the Wind Farm.

11. Noise Restrictions

11.1. **Residential Noise Restrictions.** Audible sound from the Wind Farm during Operations shall not exceed 55 dB(A) as measured at 300 feet from any existing Occupied Building on a Non-Participating Landowner's property, or at the property line if it is less than 300 feet from an existing Occupied Building. This sound pressure level shall not be exceeded for more than a total of three minutes during any sixty minute period of the day. If the Ambient Sound Pressure Level exceeds 55 dB(A), the standard shall be ambient dB(A) level plus 5 dB(A).

11.2. **Post-Construction Noise Measurements.** After commercial operations of the Wind Farm commence, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as identified by the Owner and Town. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons, and nighttime after 10 pm. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Owner shall provide the final report of the acoustics engineer to the Town within 30 days of its receipt by the Owner.

12. Setbacks

12.1. **Setback From Occupied Buildings.** The setback distance between a Wind Turbine tower and a Non-Participating Landowner's existing Occupied Building shall be not less than three times the Turbine Height. The setback distance shall

be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.

12.2. **Setback From Property Lines.** The setback distance between a Wind Turbine tower and Non-Participating Landowner's property line shall be not less than 1.1 times the Turbine Height. The setback distance shall be measured to the center of the Wind Turbine base.

12.3. **Setback From Public Roads.** All Wind Turbines shall be setback from the nearest public road a distance of not less than 1.5 times the Turbine Height as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.

13. Waiver of Restrictions

13.1. **Waiver of Noise Restrictions.** A Participating Landowner or Non-Participating Landowner may waive the noise provisions of Section 11 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. The written waiver shall state that the consent is granted for the Wind Farm to not comply with the sound limits set forth in this Agreement.

13.2. **Waiver of Setback Requirements.** A Participating Landowner or Non-Participating Landowner may waive the setback provisions of Section twelve of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. Such a waiver shall include a statement that consent is granted for the Owner to not be in compliance with the requirements set forth in this Agreement. Upon application, the Town may waive the setback requirement for public roads for good cause.

13.3. **Recording.** A memorandum summarizing a waiver or agreement containing a waiver pursuant to Section 13.1 or 13.2 of this Agreement shall be recorded in the Registry of Deeds for Grafton County, New Hampshire. The memorandum shall describe the properties benefited and burdened and advise all subsequent purchasers of the burdened property of the basic terms of the waiver or agreement, including time duration. A copy of any such recorded agreement shall be provided to the Town.

14. Decommissioning

14.1. Scope of Decommissioning Activities

14.1.1. The Owner shall submit a detailed site-specific decommissioning estimate of costs associated with decommissioning activities to the Town before construction of the Wind Farm commences. This estimate shall be updated and submitted to the Town every five years thereafter. The plan and estimate shall include the cost of removing the facilities down to eighteen (18) inches below grade.

14.1.2. The Owner shall, at its expense, complete decommissioning of the Wind Farm or individual Wind Turbines, pursuant to Section 14.1.3 of this Agreement, within twenty-four months after the End of Useful Life of the Wind Farm or individual Wind Turbines, as defined in Section 1.4.

14.1.3. The Owner shall provide a decommissioning plan to the Town no less than three months before decommissioning is to begin. The decommissioning plan shall provide a detailed description of all Wind Farm equipment, facilities or appurtenances proposed to be removed, the process for removal, and the post-removal site conditions. The Town will consider the remaining useful life of any improvement before requiring its removal as part of decommissioning. Approval of the Town must be received before decommissioning can begin.

14.2. **Decommissioning Funding Assurance**

14.2.1. The Owner shall provide a Decommissioning Funding Assurance for the complete decommissioning of the Wind Farm, or individual Wind Turbines in a form acceptable to the Town. The Wind Farm or individual Wind Turbines will be presumed to be at the End of Useful Life if no electricity is generated from the Wind Farm or any individual Wind Turbine for a continuous period of twenty-four months, and as defined in Section 1.4.

14.2.2. Before commencement of construction of the Wind Farm, the Owner shall provide Decommissioning Funding Assurance in an amount equal to the site-specific decommissioning estimate or $600,000, whichever is greater. The Owner shall adjust the amount of the Decommissioning Funding Assurance to reflect the updated decommissioning costs after each update of the decommissioning estimate, in accordance with Section 14.1.1.

14.2.3. Decommissioning Funding Assurance in the amount described in Section 14.2.2 shall be provided by a parental guarantee from the Owner's parent or affiliates, in a form reasonably acceptable to the Town. The Town shall accept a parental guarantee from the Owner's parent or an affiliate with a minimum corporate credit rating of A- from S&P or the equivalent from another reputable rating agency. If the corporate credit rating of the Owner's parent or affiliate issuing the parental guarantee declines below A-, then Owner shall, within 60 days, provide a Letter of Credit in the amount indicated in Section 14.2.2 (as adjusted per Section 14.1.1). The Letter of Credit shall be in a form acceptable to the Board of Selectmen of the Town of Groton. If Owner does not provide such financial guarantee, the Town may require another form of decommissioning assurance such as prepayment, external sinking funds, insurance, performance bond, surety bond, letters of credit, form of surety, or other method, or combination of methods as may be acceptable to the Board of Selectmen of the Town of Groton. When the corporate credit rating of the parent entity issuing the parental guarantee rises to A- or above, and remains at that level for 60 days, the Letter of Credit shall be released and not required.

14.2.4. Funds expended from the Decommissioning Funding Assurance shall only be used for expenses associated with the cost of decommissioning the Wind Farm.

14.2.5. If the Owner fails to complete decommissioning within the period proscribed by this Agreement, the Town of Groton may, at its sole discretion, enforce the financial guarantee and require the expenditure of decommissioning funds on such measures as necessary to complete decommissioning.

14.3. **Transfer of Decommissioning Responsibility**

14.3.1. Consistent with Section 2.1 of this Agreement, the provisions of Section 14 of this Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, including a Participating Landowner or any other party that assumes control of the Wind Farm or any Wind Turbines after the End of Useful Life, as defined in Section 1.4.

14.3.2. Owner shall not enter into any agreement with any party, including a Participating Land Owner and successor in ownership, which waives the responsibilities of the Owner for decommissioning or the requirement to maintain decommissioning assurance without first receiving the written agreement of the Town. The Owner shall ensure that any successors or assigns of the Wind Farm shall agree to be bound by this Agreement and shall provide the Town with written confirmation from any successors or assigns stating that they agree to be bound to this Agreement upon the acquisition of the Wind Farm.

The parties agree the terms of this Agreement are final, enforceable and no longer subject to change as of November 30, 2010, regardless of the date of execution by either party.

Town of Groton

Chairman, Board of Selectmen

Christina McClay
Selectman

Selectman

Groton Wind, LLC

Print Name: Larry Ravin
Title: Authorized Representative

LEGAL

Print Name: Scott Jacobson
Title: Authorized Representative

IBERDROLA RENEWABLES, INC.
Secretary's Certificate

I, W. BENJAMIN LACKEY, the duly elected and qualified Secretary of IBERDROLA RENEWABLES, INC., an Oregon corporation (the "Company"), hereby certify the following:

1. Groton Wind, LLC, a Delaware limited liability company ("Groton Wind"), is solely owned and member managed by the Company.

2. On 25-July-2008, the Company's Board of Directors adopted resolutions amending the bylaws of the Company, an excerpt of which is:

> RESOLVED, that Section 4.1 of the Bylaws be and hereby is replaced in its entirety with the following:
>
> 4.1 . . . . all officers shall be subject to a separate "Signature Authorization Policy" document established and approved by the Board of Directors. . . .

3. Under the Signature Authorization Policy adopted and approved by the Board of Directors of the Company and presently in full force and effect, RANY RAVIV and SCOTT JACOBSON are authorized by the Board to execute on behalf of Groton Wind any documents required to effectuate any transactions contemplated by an agreement entitled Groton – Town of Rumney Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand the _____ day of October, 2010.

W. Benjamin Lackey, Secretary

IBERDROLA RENEWABLES, INC.
Secretary's Certificate

I, W. BENJAMIN LACKEY, the duly elected and qualified Secretary of IBERDROLA RENEWABLES, INC., an Oregon corporation (the "Company"), hereby certify the following:

1. Groton Wind, LLC, a Delaware limited liability company ("Groton Wind"), is solely owned and member managed by the Company.

2. On 25-July-2008, the Company's Board of Directors adopted resolutions amending the bylaws of the Company, an excerpt of which is:

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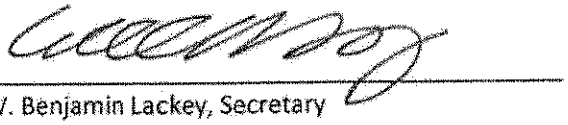
IN WITNESS WHEREOF, I have hereunto set my hand the _____ day of October, 2010.



W. Benjamin Lackey, Secretary

APPENDIX III – TOWN OF RUMNEY AGREEMENT

AGREEMENT BETWEEN TOWN OF RUMNEY AND GROTON WIND, LLC, DEVELOPER/OWNER OF THE GROTON WIND POWER PROJECT

1. Definitions

1.1. "Agreement" - This agreement between the Town of Rumney, New Hampshire and Groton Wind LLC, and its successors and assigns.

1.2. "Owner" - Groton Wind, LLC and its respective successors and assigns.

1.3. "Project Site" - Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Farm, which is located entirely in the Town of Groton, New Hampshire.

1.4. "Town" – Town of Rumney, New Hampshire.

1.5. "Wind Turbine" - A wind energy conversion system that converts wind energy for the generation of electricity, including a tower, a nacelle housing the generator and transformer, and a 3-blade rotor.

1.6. "Wind Farm" - The totality of the Wind Turbines, cables, accessory buildings and structures including substations, meteorological towers, electric infrastructure and cables and other appurtenant structures and facilities that comprise the Groton Wind Power Project under development by Owner, as reviewed by the N.H. Site Evaluation Committee in Docket No. 2010-01.

2. General Provisions

2.1. **Purpose.** Groton Wind, LLC and the Town of Rumney, NH enter this agreement to provide for applicable provisions to govern the Groton Wind Farm, in terms of the use of Town of Rumney roads and emergency services response, in recognition of the fact that under existing contracts between the Towns of Rumney and Groton, Town provides both Fire Protection and Emergency Medical Services within the Town of Groton.

2.2. **Enforceability.** This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner, or any other party that assumes control of the Wind Farm or any Wind Turbines. The Owner assumes responsibility for compliance with this agreement by all of its employees, agents, contractors and subcontractors.

2.3. **Applicability to Owner.** This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Farm and Project Site as conferred to Owner by Participating Landowner agreements.

2.4. **Recording.**

2.4.1. This Agreement shall be recorded at the Grafton County Registry of Deeds.

2.5. **Survivability.** The invalidity, in whole or in part, of any of this Agreement will not affect any other paragraph in this Agreement.

2.6. **On-site Burning.** In recognition of the existing Fire Protection Contract between the Towns of Rumney and Groton, the Owner will obtain a permit from the Groton Fire Chief, notify the Rumney Fire Department that a permit has been issued, and comply with all State requirements before Owner, or any of its agents, performs any on-site burning, notwithstanding the fact that the Project Site is in Groton.

2.7. **Access.** The Town shall have access to all gated entrances to the Project Site for the purpose of emergency response. The Owner shall provide to the Town keys,

combination numbers, and/or remote control devices for opening project gates. Such keys or access devices shall not be provided by the Town to anyone other than persons employed by the Town of Rumney Fire Department , EMS, or Police department, while such persons are engaged in their official duties. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon reasonable request of the Town for the purpose of safety inspections. The Owner shall provide access for emergency response purposes pursuant to the terms provided under Section 6 of this Agreement.

2.8. **Liability Insurance.** Upon issuance of a certificate by the N.H. Site Evaluation Committee for the Wind Farm, the Owner shall maintain a current general liability policy covering bodily injury and property damage with limits of at least $10 million, per occurrence, in the aggregate. Certificates shall be provided to the Town upon purchase and annually upon renewal. The Town of Rumney shall be named as an additional insured, to the extent of the indemnification obligation below.

2.9. **Indemnification.** The Owner specifically and expressly agrees to indemnify, defend, and hold harmless the Town and its officers, elected officials, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of any negligence or wrongful acts of the Owner, its employees, agents, representatives or subcontractors of any tier, their employees, agents or representatives in connection with the Wind Farm. The indemnity obligations under this Article shall include without limitation:

2.9.1. Loss of or damage to any property of the Town or any third party or, to the extent that loss of or damage to property of Owner, results in a third party claim against the Town, loss of or damage to any property of Owner;

2.9.2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its subcontractors of any tier.

The Owner's indemnity obligation under this Article shall not extend to any liability caused by the negligence or willful misconduct of any of the Indemnitees, or third parties outside of its control.

2.10 **Route of Distribution Power Line.** With respect to the power line connecting the Wind Farm to the power grid, particularly that portion located within the Town of Rumney, the Owner shall use every effort to ensure that the line is installed from Groton Hollow Road along N.H. Route 25 east to the Plymouth town line, unless the New Hampshire Electric Cooperative determines that the Route 25 route is not technically feasible.

3. Wind Turbine Equipment and Facilities Safety

3.1 The Owner shall establish an Emergency 9-1-1 address during project construction, and revise such address, if necessary, when operations at the Wind Farm commence.

3.2 The Owner shall provide to the Town copies of Construction site safety plans, blast plans, and spill protection plans prior to the commencement of construction, as well as copies of any work plans and specifications as the public safety officials of the Town believe are reasonably necessary to enable emergency preparedness. The Owner shall also provide the Town with Material Safety Data Sheets for all chemicals to be used on site or to be transported on any access roads within Rumney.

3.3 The Owner shall provide to the Town copies of Operations safety and spill prevention plans.

3.4 The Owner shall allow access to Town fire, EMS, or police department employees, at any time upon request, for the purposes of site review and emergency access conditions review.

3.5 Project Point of Contact. During construction and operation of the Wind Farm, the Owner shall identify an individual(s), including phone number, email address, and mailing address who will be the primary point of contact for the Town for all inquiries.

4. Project Site Security

4.1 Wind Turbine exteriors shall not be climbable up to fifteen (15) feet above ground surface.

4.2 All access doors to Wind Turbines and electrical or any other electrical or high-voltage equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

4.3 Entrances to the Project Site shall be gated and locked during non-working hours. If problems with unauthorized access are identified, the Owner shall implement additional security measures.

5. Reports to the Town of Rumney

5.1 **Incident Reports.** The Owner shall provide the following to the Chairman of the Board of Selectmen or his designee concurrently with their submission to any other governmental agency:

5.1.1 Copies of all reporting of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another appropriate federal or state government agency.

5.2 **Periodic Reports.** The Owner shall submit, on an annual basis starting one year from commencement of construction of the Wind Farm, a report to the Board of Selectmen of the Town of Rumney, providing, at a minimum, the following information to the extent known by Owner:

5.2.1 If applicable, status of any additional construction activities, including schedule for completion;

5.2.2 Details on any calls for emergency police, fire, and EMS assistance;

5.2.3 Location of all on-site fire suppression equipment; and

5.2.4 Identity of hazardous materials, including volumes and locations, as reported to state or federal agencies.

6. Emergency Response

6.1. Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Farm through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Farm. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town, including provisions for access to the Project Site, Wind Turbines or other facilities in response to an alarm or other request for emergency response, and provisions that provide the Town with contact information of personnel available at every hour of the day.

6.2. Prior to commencement of operations at the Wind Farm, the Owner shall provide 3 hours of classroom training at the Rumney Fire Department at no charge. Prior to commencement of operations at the Wind Farm, The Owner shall provide training to Town of Rumney Fire, EMS, and Police departments jointly, without charge to the town, consisting of a total of 8 hours training at the Groton Wind Farm site, to include review of site safety plans, fire safety and fire suppression equipment, site access, and Groton Wind employee certifications. Thereafter Owner will provide annual training of a total of 8 hours of training at the Wind Farm. Groton Wind shall work to accommodate reasonable requests by the Rumney Fire, EMS, or Police Department for responders from other mutual aid towns to also attend the annual training at the same time with the Rumney responders.

6.3. The Owner shall maintain fire alarm systems, sensor systems and fire suppression equipment that is installed in all Wind Turbines and facilities.

6.4. In the event of an emergency response event that creates an extraordinary expense for the Town based on obligations under a mutual aid agreement, Owner shall reimburse the Town for actual expenses incurred by the Town.

6.5. Nothing in this agreement shall be construed as a promise, by the Town, to provide any particular level or type of fire, emergency, or highway services to the Wind Farm, or to give the Wind Farm any particular priority vis-à-vis its services to other citizens, nor does the Town waive any immunities or liability protections available to the Town under state law, including but not limited to RSA 154:1-d, RSA 153-A:17 and :18, or RSA 231:90 - :92-a.

7. Public Roads

7.1 The Owner shall identify all local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the facility.

7.2 The Owner shall, at its own expense, hire a qualified New Hampshire professional engineer to prepare two reports to the Town. The first will document and photograph road conditions prior to construction, and shall be submitted to the Town prior to the start of construction. The second will document and photograph conditions subsequent to construction, and will be submitted thirty days after construction is completed or as weather permits. The Owner shall obtain the approval of the Town in the selection of the engineer to perform this work, which approval shall not be unreasonably withheld, delayed or conditioned. The second report shall also detail all work required, if any, to restore Groton Hollow Road to its prior condition as detailed in the first report, as well as an estimate of the amount of money required for such work, and the Owner shall be responsible for the cost of such work. Prior to commencing Wind Farm construction, the Owner shall post a letter of credit in a form acceptable to the Town in the amount of $200,000, for the purpose of guaranteeing to the Town all road obligations described in this Section 7 'Public Roads'. The security may be reduced with the approval of the Town following the engineer's second report and cost estimates. The security shall remain in effect 12 months after the completion of the restoration work, to provide against latent defects. If no restoration work is required, then the letter of credit shall be released within 60 days of the provision of the second report to the Town.

7.3 Any road damage caused directly by the Owner or its contractors at any time shall be promptly repaired at the Owner's expense, and, in addition during the construction period, shall perform such periodic maintenance on roads used by the Owner for its construction activities as the Town may reasonably require in order to mitigate on an ongoing basis the impact of construction vehicles; provided, however, that in accord with RSA 236:9 - :12, the Owner must seek prior approval of the Town for the performance of any such work, including any work affecting the travel surface, drainage, or any other aspect of the public road, and shall produce such plans as the Town may reasonably require detailing the work to be approved.

7.4 The Owner will reimburse the Town for reasonable costs associated with special details, if required by the Town, to direct or monitor traffic within the Town limits during construction, including but not limited to, speed monitoring and enforcement on public roads within Rumney being used for the construction. All reimbursement payments shall be due 45 days from the date of invoice.

7.5 Construction and repair work on Groton Hollow Road shall not result in the widening of the existing traveled way of said road; provided, however, that 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.

7.6 Employees, contractors and other involved in the construction of the Wind Farm shall not park, or stage, along the sides of Groton Hollow Road in Rumney.

8. Construction Period Requirements

8.1 **Site Plan.** Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final site plans showing the construction layout of the Wind Farm.

8.2 **Construction Schedule**. Prior to the commencement of construction activities at the Wind Farm, the Owner shall provide the Town with a schedule for construction activities, including anticipated use of public roads for the transport of oversize and overweight vehicles. The Owner shall provide updated information and schedules regarding construction activities to the Town upon request of the Town.

8.3 **Blasting**. The handling, storage, sale, transportation and use of explosive materials shall conform to all state and federal rules and regulations. In addition, the Owner shall comply with the following requirements.

8.3.1 At least ten days before blasting commences, the Owner shall provide a copy of the Blasting Plan and evidence of approval by the New Hampshire Department of Safety to the extent such approvals are required by the New Hampshire Department of Safety.

8.3.2 In accordance with the rules of the State of New Hampshire, the Owner shall notify the Rumney police and fire chiefs before blasting commences.

8.4 **Construction Vehicles**

8.4.1 Construction vehicles, except for worker passenger and light truck vehicles being used for worker transportation to the site, will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday, and will not travel on Town roads on Sunday. Permission to use construction vehicles on Town roads during the times otherwise prohibited above may be granted by the Town if requested in advance. The Selectmen shall delegate to one individual (e.g. a Selectman or the Road Agent) the authority to grant such permission. The Owner shall communicate and cooperate with the Town's representative to prevent dangerous volumes of worker traffic on Groton Hollow Road, including instituting worker carpooling if deemed necessary by the Town.

8.4.2 Construction will only be conducted between 6:00 am and 7:00 pm, Monday – Saturday. Construction will not be conducted on Sundays. Exceptions to these times and days are permitted if prior approval is obtained from the Town.

8.4.3 Oversized vehicles requiring escort vehicles shall not travel on Groton Hollow Road in Rumney during school bus route hours, specifically between 7:30 – 8:00 AM and between 2:30 – 3:00 PM on days in which school is in session. Owner is not responsible for altered bus routes or times, and is not required to adjust the hours of prohibition on oversized vehicles on Groton Hollow Road in Rumney, as a result of inclement weather, delayed start school days, or any other alterations in the bus or school schedules.

8.4.4 Notwithstanding anything in this Agreement to the contrary, upon prior approval of the Town, oversized vehicles delivering equipment and supplies may travel on Town roads between the hours of 7:00 pm and 6:00 am and on Sundays in order to minimize potential disruptions to area roads.

8.4.5 For purposes of this section, construction period shall be deemed to include any construction, reconstruction, or decommissioning activities.

9. Operating Period Requirements

9.1 **Spill Protection.** The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances used during the construction and operation of the Wind Farm. This includes, without limitation, oil and oil-based products, gasoline, and other hazardous substances from construction-related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with copies of the Spill Prevention, Control and Countermeasure (SPCC) for the Wind Farm, and any other spill-related documentation as may be required by state or federal agencies, including MSDS sheets.

9.2 **Pesticides and Herbicides.** The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Farm.

10. **Miscellaneous**

10.1 **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, neither party shall be entitled to, and each of Owner and Town hereby waives any and all rights to recover, special, punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement.

10.2 **Default and Cure.** This Agreement shall not be revocable by Town, except that Town may terminate this Agreement if a material default in the performance of Owner's obligations under this Agreement occurs and such default is not remedied within sixty (60) days after Owner receives written notice from Town of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure. The Owner may make an advance request to extend the remediation period, and so long as the Owner demonstrates diligence in curing the default, the Town shall grant the extension, except for good and sufficient cause explained in writing. This paragraph shall not be construed as withdrawing from the Town any legal authority it has under state law to regulate and control its public highways but shall be binding upon Town and Owner as its relates to Owner's conduct with regards to the Wind Farm.

The parties agree the terms of this Agreement are final, enforceable and no longer subject to change as of October 18, 2010, regardless of the date of execution by either party.

Town of Rumney

Mark H. Andrew, Chairman BOS

W. John Fucci, Selectman

Janice Mulherin, Selectman

Groton Wind, LLC

Name: Larry Lavin
Title: Authorized Representative

Name: Scott Jacobson
Title: Authorized Representative

Appeals Process

Any person or party aggrieved by this decision or order may appeal this decision or order to the New Hampshire Supreme Court by complying with the following provisions of RSA 541

R.S.A. 162-H: 11 Judicial Review. – Decisions made pursuant to this chapter shall be reviewable in accordance with RSA 541.

R.S.A. 541:3 Motion for Rehearing. - Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

R.S.A. 541:4 Specifications. - Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.

R.S.A. 541:5 Action on Motion. – Upon the filing of such motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.

R.S.A. 541:6 Appeal. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

In the matter of the	)	
Application for Certification	)	**Docket No. 2010-01**
Pursuant to RSA 162-H of	)	**June 5, 2011**
GROTON WIND LLC	)	
	)	

MOTION FOR REHEARING

The Intervenor Group Buttolph/Lewis/Spring (the "Intervenors") respectfully moves that the New Hampshire Site Evaluation Committee (the "Committee") rehear its May 6, 2011 Decision and Order pursuant to RSA 541:3 and Site Rule 202.29. The Intervenors submit the following memorandum in support of its motion.

Concerns with the Decision and Order are focused in the following areas:

1) Consideration of the applicability of the need to strike a balance that considers the extent to which this particular proposed Energy Facility contributes to state production and carbon mitigation goals pursuant to RSA 162-H:1, and the associated Committee conclusion that wind farms are exempt from this consideration pursuant to RSA 352-F. – error of law/judgment.

2) Conclusion that adverse impacts from this energy facility are "reasonable" pursuant to RSA 162-H:16. – error of judgment.

3) Allowing new testimony from the Applicant into the Docket, without providing an opportunity for Intervenors to Cross-Examine or dispute – an error of law.

4) Committee findings reached while members are apparently unclear about the power and responsibility of the Committee - error of law/reasoning.

5) Improper weighting of evidence and misstatements of fact – error of law/reasoning.

6) Inappropriate comparisons by the Committee to other NH Wind Farm certificates and other commercial projects.

1) Striking a balance pursuant to RSA 162-H:1

RSA 162-H:16 sets forth requirements against which the Site Evaluation Committee (Committee) shall evaluate the application. The Committee must find, in part, that:

The Site and Facility will not unduly interfere with the orderly development of the region with ***due consideration*** having been given to the views of municipal and regional planning commissions and municipal governing bodies. (RSA 162-H:16 IV, (b)). (Emphasis added).

The Site and Facility will not have an ***unreasonable*** adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety. (RSA 162-H:16 IV, (c)). (Emphasis added).

The legislation clearly vests with the Committee the responsibility to make a series of judgments in two key areas within the text of the above RSA excerpts, as noted by the terms "due consideration" and "unreasonable". As the Committee has noted, guidance for the committee in making these judgments can be found in the RSA's Declaration of Purpose which provides a context within which these judgments are to be made. (Deliberations Day 3, pg 26 line 20 – 23). This Declaration states in part "... the legislature finds that it is in the public interest to maintain a *balance* between the *environment* and the *need* for new energy facilities in New Hampshire; ...that full and timely *consideration of environmental consequences* be provided; ...that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in

which *all environmental, economic, and technical issues are resolved* in an integrated fashion, all to *assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles*..." (Emphasis added).

As articulated in the Intervenors' final brief dated April 1, 2011, it is the Intervenors' position that, due to the small amount of energy produced, and the minimal carbon mitigation that was likely to be achieved as compared to the significant negative impacts associated with the construction and operation of this renewable energy facility, the Applicant failed to demonstrate that there are enough positive benefits from this facility to offset the obvious negatives. In assessing the alleged positive benefits, the Intervenors requested that the Committee place significant weight on the conclusions of Mr. Harrington because of his expertise, as a PUC engineer, in matters of production engineering analysis.[1] Mr. Harrington appeared to agree with the Intervenors' position regarding the overstatements by the applicant in the areas of energy production and carbon mitigation. (Deliberations Day 3, pg 12 line 14 – pg 14 line 14; pg 16 line 8 – pg 17 line 3). However, Mr. Harrington went on to opine that the output from this facility is irrelevant, so long as there is some level of contribution to state goals. He argued, apparently persuasively to the full Committee, that since this energy facility employs "Renewable energy generation technology" as defined in RSA 362-F:1, the construction of this particular facility is, by definition, automatically declared by the legislature to be "in the public interest" regardless of the extent to which the facility is judged to contribute positive benefits. (Deliberations Day 3, pg 28 line 5 –16). Underscoring this point, Mr. Harrington concluded that due to the classification of this energy facility as a renewable energy facility, the only basis for assessing balance pursuant to RSA 162-H:1 insofar as the generation capabilities are concerned, rests with the applicant's analysis of whether or not they will make enough money on the project to justify it (Deliberations Day 3, pg 24 lines 14 –18).

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[1] It is important to note that the Intervenors did not urge the committee to assess significant weight to Mr, Harrington's opinions on matters of legal interpretation. For the record, we recognize Mr. Harrington's expertise on matters of engineering analysis only.

While the Intervenors appreciate Mr. Harrington's Libertarian view that the Applicant's profit motive should be the singular determining factor in assessing a wind farm's positive contribution to state goals, it is important to note that RSA 162-H makes no exception for facilities that happen to be categorized as utilizing renewable technology pursuant to RSA 362-F. RSA 162-H applies to ALL energy facilities, regardless of categorization, assuming the facility meets the appropriate nameplate requirements mandating Committee jurisdiction. The wording in RSA 162-H:1's Declaration of Purpose makes it crystal clear that the legislature did not intend for a corporation's profit motive to be the only determining factor when assessing contributions to state goals. Such an interpretation leads to the logical conclusion that, when developing findings with respect to the orderly development of the region, adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety, all that is required insofar as the State of New Hampshire is concerned are infinitesimal contributions to state goals. Under this interpretation, it is difficult to imagine any scenario under which a wind farm certificate of site and facility would be denied because the entire Declaration of Purpose, with respect to the requirement to achieve "balance", would be rendered irrelevant when considering wind farm applications. Further, the Committee had already voted and determined most of the findings during deliberations before the Intervenors' position regarding balance was even discussed. It appears clear, by the record, that reasonableness of the adverse impacts of this wind farm was judged by committee members without any meaningful background analysis of the extent to which this wind farm actually will produce usable electricity and mitigate carbon, beyond that which was claimed by the Applicant.

In summary of this area of concern, the Intervenors respectfully request that the Committee rehear the arguments that led to the conclusion that wind farms are exempt from the key provision that provides context for the determination of the reasonableness of its findings due to RSA 362-F.

2) Conclusion that adverse impacts from this energy facility are "reasonable" pursuant to RSA 162:H-16.

With respect to Mr. Harrington's assessment of the extent to which this facility mitigates carbon in the atmosphere, he stated "people can draw their own conclusions... the one I personally drew was that they [the Applicant] were a little bit generous with themselves [regarding the extent to which carbon was likely to be mitigated] and, probably the Intervenors were probably more accurate." It appears that Mr. Harrington, and ultimately the Committee, considered this exaggeration to be merely "a little bit generous" (Deliberations Day 3, pg 13 lines 1-9). It is appropriate to remind the Committee that the Intervenors concluded, and Mr. Harrington apparently agreed, that the Applicant likely exaggerated the extent to which this facility would mitigate carbon by an overwhelming magnitude, in the order of a nearly 20:1 overstatement. (Intervenor's final brief dated April 1, 2011, pg 7, paragraph 1).

In discussing Mr. Harrington's interpretation of the applicability of RSA 362-F, Chairman Getz attempted to rephrase Mr. Harrington's conclusions regarding profit motive as the sole determining factor in assessing acceptable levels of electricity production. According to Chairman Getz's interpretation, if "there is a slight differential about the output, about the capacity factor, etcetera, that that's not something that's in as much itself should be determinative of the outcome, I guess, if it's within a reasonable range." However, in agreeing with the Intervenor's assessment that capacity factors are likely overstated by the applicant, Mr. Harrington's words do not match the recharacterization of Chairman Getz. Mr. Harrington stated that it is of no concern to the committee if, for example, the Applicant claims that this facility will operate at 36 percent capacity factor when the reality might be 22 percent. (Deliberations Day 3, Pg 24 lines 14-18). Clearly, an overstatement of nearly 40%, as suggested by Mr. Harrington in his hypothetical example, is unreasonable. Considering the Committee deliberation regarding the balancing argument articulated by the Intervenors did not occur until after the committee had voted on reasonableness when determining most of its findings pursuant to (RSA 162-H:16 IV, (b and c)), this newly understood extent of overstatement on the part of the Applicant may well have shifted these findings from "reasonable" to "unreasonable" on any one of those findings.

Considering the above, the Intervenors respectfully request that the committee rehear discussions of reasonableness and due consideration in the context of large overstatements by the applicant in the areas of carbon mitigation and production.

3) Allowing new testimony from the Applicant into the Docket, without providing an opportunity for Intervenors to Cross-Examine or dispute.

The Committee allowed the Applicant to respond and provide explanations for the Intervenor's and Counsel for the Public's Final Brief and Proposed Conditions. In doing so, the Committee allowed new testimony to be introduced into the Docket without following **Site 202.21 (**All testimony should be under oath or affirmation and shall be subject to cross-examination by parties or their representatives.) It is clear the SEC reviewed and considered these Responses by the Applicant throughout the Deliberations. For example, the Applicant responded to the **Buttolph Group Condition Request No.1**, a Property Value Guarantee, by finding it unacceptable. The Applicant's Explanation was, "There is no credible support in the record for the proposition that this Project will affect property values within a two mile radius, or even at all. Such a condition is unprecedented – neither of the other two wind energy facilities that have been certificated by the Site Evaluation Committee is subject to this type of condition – and is arguably beyond the Committee's authority to order. Lastly, the condition is unworkable as it raises more questions than it answers, and creates significant enforcement/implementation responsibilities for the Subcommittee."

The Applicant's arguments are untrue, as Property Value Guarantees have been issued in other States previously, as testified by Mr. Michael McCann. (See Hearings Day 5, Pg 50, lines 1-6, and Pg 51, lines 3-8). Although a property value guarantee has not previously been a Condition of a Certificate in NH, neither of the two previously certified wind projects had 200 homes within a 2 mile radius, in fact they had very few homes within a 2 mile radius, and should not be used as a comparison for appropriate requirements for Groton Wind. Lastly, a PVG is not "unworkable", nor has the Applicant provided any evidence of "significant enforcement/implementation responsibilities for the Subcommittee." This amounts to new testimony by the Applicant. The Intervenors were not provided

an opportunity to cross-examine or dispute, in apparent violation of Site 202.21. Had the Intervenors been provided the opportunity to cross examine or dispute, we may have provided further exhibits, and would have engaged in cross examination that would have further shown, among other things, that the primary author of the Applicant's own study encourages the use of property value guarantees.

Buttolph Group Condition Request No. 12D. – Applicant will file an emergency plan specific to Groton Hollow Road, of which the SEC must approve this plan prior to construction commencing. The Applicant found this condition to be unacceptable, and stated, "It is unnecessary for the SEC to review or approve the Project's plans for dealing with issues related to oversized vehicles. Oversized vehicles are strictly governed by the NH DOT....Police at the scene need discretion to address any issues that arise. The Applicant will adhere to the detailed requirements of NH DOT oversized vehicle permits." The Applicant knew or should have known the Oversized Vehicle Permit does not apply to Groton Hollow Road, as it is not a state road. Therefore the Applicant's insinuation that safety is being overseen on Groton Hollow Road by the State, is a serious inaccuracy in the Applicant's testimony. The safety of Groton Hollow Road residents is at risk due to the lack of an acceptable plan. As such, there is no room for misleading the SEC or minimizing the important role they should have in overseeing the safety of the residents during the construction of this project. If the Intervenors had been allowed to respond to the Applicant's significant inaccuracies, we would have brought forth evidence recognizing the need for the SEC to approve and oversee the emergency plan. For example, numerous problems have occurred throughout the country regarding the transportation of turbines to the project sites. In fact, on May 31, 2011, a truck carrying a 150ft turbine blade in Shelby, Ohio, got stuck in downtown. The traffic was blocked for more than 5 hours, as they finally repaired the trailer. These situations can happen on Groton Hollow Road, and therefore requires the supervision of the SEC in order to minimimize the risks to the residents.

Another exhibit that would have been brought forward relates to an illegal fire that was recently located within the "private" part of Groton Hollow Road. Our 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. Setting aside the concern that it appears Iberdrola's business

partners have begun the process of working on this project before the appropriate lead times have passed relative to the SEC's process, clearly safety issues associated with this type of activity are a major concern. No burn permits had been issued in Rumney or Groton as required in the Applicant's Agreements with the Towns of Rumney and Groton. Further, the Rumney Fire Department did not have access to the locked gates at the base of the "private" part of Groton Hollow Road. Instead, the Rumney Fire Department had to cut the lock in order to access the property. The Applicant's Agreements with the Towns of Rumney and Groton clearly state that as the emergency responder, Rumney will have keys, combinations etc., to allow access on to private property in case of emergency. Lastly, illegal materials were being burned at this fire, potentially posing a hazard to those living on Groton Hollow Road. The State Fire Marshall has been notified of these issues, and presumably accountability for this apparently illegal act will be forthcoming. Nevertheless, this event underscores the need for supervision of emergency plans. The Committee is responsible to ensure that appropriate conditions, including an emergency plan with proper oversite, have been ordered such that the safety and well being of all the Groton Hollow Road residents will be assured.

Buttolph Group Condition Request No. 12E. – Each Groton Hollow Road property owner to be paid $7800 by the Applicant to attempt to compensate for the delays, inconveniences and loss of enjoyment of their homes during the construction period. The Applicant found this condition to be unacceptable, and "the proposed condition is unwarranted, unjustified and unsupported by any evidence, and there is no precedent for such a condition." If the Buttolph Group had been provided an opportunity to respond to this new testimony, we would have entered a new exhibit titled, "**Lempster Wind Farm Neighbor Agreement.**" (See Attached) On page 2 of this document, **Number 3. Construction Inconvenience**, clearly shows that Iberdrola recognizes the inconvenience the wind farm presents to its residential neighbors, including those projects in New Hampshire. In addition, Iberdrola recognizes that to address these inconveniences, mitigation is needed. However, unlike in Lempster, residents of Groton Hollow Road will not have an ability to "travel unaccustomed routes to avoid construction traffic." Instead, they will be forced to endure approximately 18 months of major disruption to their lives, and at times will be "stranded" at their homes for periods of time throughout

the process. The Applicant was untruthful in stating this condition was unjustified and unsupported by any evidence in light of the fact they have paid neighboring residents of Lempster for far less inconvenience than those of Groton Hollow will endure.

Buttolph Group Condition Request No. 12 F. – The Applicant will not be allowed to widen Groton Hollow Road under any circumstance, including temporarily. The Applicant found this condition to be unacceptable as well, and states, "The Rumney Agreement was the result of extensive public consultations with the Town of Rumney Board of Selectmen….." The Rumney Board of Selectmen publishes all meetings on its Town website. There are absolutely no minutes that reflect a change in the Town of Rumney Agreement to allow a temporary widening of Groton Hollow Road. In fact, the August 30, 2010 Board of Selectmen minutes reflect the exact opposite, during a discussion with the Foote's of Groton Hollow Road. "The board assured the Foote's that only the existing travel portion of the road would be used. **The road will not be widened nor will any trees be removed.**" Any consultation and or change of the Agreement to now allow a "temporary" widening, did not take place in public, and the Applicant's explanation is therefore not accurate.

4) SEC Unclear of its own powers

The SEC was unclear of their legal powers and jurisdiction during the deliberations. If they did not clearly recognize what they had the legal authority to do, their decisions should be nullified. For example, Deliberations, Day 1 am pg 55 lines 8 – pg 62 line 14. Mr. Harrington clearly did not understand that the Committee has the ability to impose a Property Value Guarantee as a condition on the Applicant, yet he voted not to condition the Certificate with a PVG. Again during Deliberations, Day 3, am. pg 34, lines 16-21, Mr. Harrington asked specifically if the SEC has the legal right to impose a PVG, yet he had already voted on it. It is clearly inappropriate for any member of the SEC to vote on a finding while being unclear about the resulting effect of that vote, especially in light of the significant amount of time, money, and energy spent by the Intervenors on presenting Mr. McCann's recommendation for a Property Value Guarantee. The entire Committee should have known clearly, prior to this testimony, given the significant exhibits which had previously been entered into the

Docket, that a Property Value Guarantee was a legal binding document and could be entered as a Certificate Condition.

5) Improper weighting of evidence and misstatements of fact.

There are a number of examples in the record whereby members of the Committee indicate a lack of understanding of the proper weighting of evidence. For example, Mr. Seltzer indicated that he places greater weight on a report regarding Property Values, presented by the Applicant, without the opportunity to cross examine the primary author of this report than he does to a recognized expert, Michael McCann, who underwent extensive cross examination. (Deliberations Day 1, AM, Pg 63 line 20-24, pg 64, line 1-12).

In the Committee's Decision and Order, page 35, the Committee states that "The Applicant has the support of Grafton County Commissioner from District 3, Martha B. Richards."[2] This s is not accurate. Omer Ahern Jr. is the current Grafton County Commissioner from District 3, having soundly defeated Ms. Richards at the ballot box during the general election last year. Mr. Ahern is firmly opposed to the project. (See SEC Docket 2010-01 document entered into the record as "Letter from Omer C. Ahern, Jr,. dated April 4, 2011" at http://www.nhsec.nh.gov/2010-01/index.htm). The impact of this failure of the Committee to consider up-to-date information in consideration of its duty to give "due consideration ...[to the current] ... views of municipal and regional planning commissions and municipal governing bodies." (RSA 162-H:16 IV, (b).) requires that the committee reassess the views of not only the Grafton County Commissioners, but also of 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.

6) Inappropriate comparisons to other NH Wind Farm Certificates and other commercial projects.

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[2] Grafton County District 3 is made up of the geographic area that includes the proposed Groton Wind Farm.

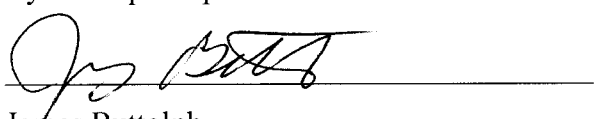
The Committee repeatedly questioned how the SEC had addressed various circumstances at other New Hampshire wind farms projects, and expressed a desire to ensure that consistency exists. However, each of these projects is unique, with different physical environments and different potential adverse impacts, necessitating that each project should be treated as a unique, stand alone projects throughout the decision-making process. For example, Day 2 Deliberations, pg 97, lines 2-12, regarding maximum sound levels, Mr. Hood states, "conditions that were put on for Lempster seemed to be working..." However, the SEC has no knowledge of the number of "Wind Farm Neighbor Agreements" that were signed in Lempster, which paid property owners for their inconvenience in dealing with sound issues. Therefore, no complaints does not necessarily mean there is no issue, and certainly should not be used as a basis in the decision making for Groton Wind conditions. No complaints does not create a fact of no issue, rather it is creating an assumption. In addition, the number of turbines, the layout of the turbines and the fact that Groton Wind Project overlooks the Baker River Valley which often has an echoing effect, creates a totally different and incomparable setting to Lempster Wind. (See Application 1, Figure 3) On the other hand, the SEC spoke of conditions placed on Iberdrola's Deerfield Wind, VT, as if the wind farm was irrelevant to Groton Wind. (See Deliberations Day 2, am, pg 96, lines 15-20.) Perhaps other states that have more experience with wind farms, and have learned valuable lessons. The Committee should at least consider some of the various conditions placed on wind farms outside of the State, such as Property Value Guarantees, noise conditions as well as safety conditions.

In summary, we respectfully ask that this honorable Committee rehear pertinent testimony that will address the specific parameters indicated above.

Respectfully submitted,

The Intervenors

By their spokesperson



James Buttolph

I, James Buttolph, do hereby certify that I caused the foregoing to be sent by electronic mail or U.S. mail to the persons on the currently active service list for docket 2010-01. An original plus 9 copies has also been provided via US mail to the SEC.

WIND FARM NEIGHBOR AGREEMENT

This **WIND FARM NEIGHBOR AGREEMENT** dated _____, 2007 (the "Agreement") is entered into between , whose address is ("Owner"), and **LEMPSTER WIND, LLC**, a Delaware limited liability company, its successors and assigns, whose address for purposes of this Agreement is c/o Iberdrola Renewable Energies USA, Ltd., 201 King of Prussia, Suite 500, Radnor, PA 19087 ("Lempster").

BACKGROUND

A. Lempster has entered into lease agreements with certain landowners in the Town of Lempster, Sullivan County, New Hampshire, which allow Lempster to construct, operate and maintain a wind power generation project consisting of wind turbine generating units (each a "Turbine"), meteorological towers ("Towers"), an electrical substation ("Substation"), electrical collection system facilities ("Collection Facilities"), roads and other improvements (collectively, the "Wind Farm Improvements") comprising an 24MW wind farm sometimes referred to as the Lempster Wind Farm ("Wind Farm").

B. The Wind Farm Improvements are located on property adjacent to the Owner's property, as legally described in the attached **Exhibit A** ("Owner's Property"), and from time-to-time will generate sounds that can be heard, and may be seen on Owner's Property.

C. In order to limit the extent of such possible burdens on Owner's Property, Owner and Lempster wish to enter into this Agreement, to provide for a grant of noise and set back waivers and other matters and establish the rights of the parties and their duties to each other with regard to the Wind Farm (collectively, "Rights").

D. Additionally, Lempster recognizes and desires to compensate Owner according to the terms of this Agreement for inconveniences Owner may encounter associated with the Wind Farm Improvements.

IN WITNESS WHEREOF, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

GRANT OF RIGHTS

1. **NOISE WAIVERS**. Owner hereby grants to Lempster the right and privilege to generate and maintain audible noise levels in excess of fifty five (55) db(A) on and above the Owner's Property at any or all times of the day or night ("Noise Rights") within 300 feet of the outer wall of each presently existing occupied residence or the property line of Owner's Property (whichever is less).

2. **SETBACK WAIVERS**. To the extent that (a) Owner now or in the future owns or leases any land adjacent to the Wind Farm or (b) Lempster or any affiliate of Lempster owns, leases or holds an easement over land adjacent to Owner's Property and has installed or constructed or desires to install or construct Wind Power Facilities on said land at and/or near the common boundary between Owner's Property and said adjacent land, then Owner hereby waives any and all setbacks and setback requirements, whether imposed now or in the future by applicable law or by any person or entity, including, without limitation, any setback requirements described in current or future zoning ordinances of the municipality or in any governmental entitlement or permit heretofore or hereafter issued to Lempster or such affiliate. Further, if so requested by Lempster or an affiliate, Owner shall, without demanding additional consideration therefor, (i) execute (and if appropriate cause to be acknowledged) any setback waiver, setback elimination or other document or instrument reasonably requested by

Lempster, the Town of Lempster, Sullivan County or the State of New Hampshire or any applicable governmental authorities in connection therewith, (ii) return the same thereto within ten (10) days after such request, and (iii) provide such public support as Lempster may reasonably request in connection with any related zoning variance or other government applications by Lempster.

3. **CONSTRUCTION INCONVENIENCE.** Despite Lempster's efforts to control dust and noise during construction of the Wind Farm Improvements, Owner recognizes that due to the location of Owner's Property near gravel roads or construction areas Owner may be inconvenienced by construction noise and dust. Additionally, Owner recognizes that construction traffic in some areas may inconvenience Owner or require Owner to travel by unaccustomed routes to avoid construction traffic.

4. **CONSIDERATION.** As consideration related to these expected inconveniences to Owner associated with the construction, development and operation of the Wind Farm and the other rights granted in this agreement, Owner agrees to accept the annual installment payments from Lempster, as shown on **Exhibit B**.

5. **MORTGAGES, TRANSFERS AND ASSIGNMENT.**

(a) Lempster may without need to obtain Owner's consent or approval: (1) mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement and the Rights; and (2) assign or otherwise convey all or part of its interest in this Agreement and the Rights to third parties. Lempster will provide Owner with notice of such mortgage, collateral assignment, encumbrance, or conveyance.

(b) Owner may without need to obtain Lempster's consent or approval, sell, mortgage, assign or convey away all or a part of Owner's interest in Owner's Property, but any conveyance shall be subject to the terms of this Agreement. Owner will provide Lempster with reasonable notice of such mortgage, collateral assignment, encumbrance, or conveyance. If there is a change in ownership of Owner's Property, Owner agrees to promptly notify Lempster of name and mailing address of the new Owner. Unless otherwise agreed, after receipt of a written notice of change of ownership of Owner's Property, Lempster shall make any remaining payments due under this Agreement to the new owner identified in the notice of change of ownership.

6. **MEMORANDUM.** The parties agree to sign and record in the public records a Memorandum of Wind Farm Neighbor Agreement. The Memorandum shall not reveal any financial terms. This Wind Farm Neighbor Agreement shall not be recorded.

7. **TERM AND TERMINATION.** The Rights and other benefits and burdens of this agreement run with the land. The term of this Agreement and of the Rights shall commence upon the signing of this document, and shall continue for an initial term of thirty (30) years after the Wind Farm begins Commercial Operation (the "Initial Term"). Lempster shall have the right to extend the Term hereof for two (2) additional periods of ten (10) years each (the "Extension Term" and collectively, with the Initial term, the "Term") by written notice to Owner delivered prior to expiration of the Initial Term. "Commercial Operation" for purposes of this Agreement shall mean the date the Wind Farm Improvements are constructed, tested, interconnected with the transmission provider's transmission and distribution system, staffed and operational, as determined by Lempster. Lempster shall have the right to terminate this Agreement effective upon thirty (30) days prior written notice to Owner. The Rights and this Agreement shall not be terminable by Owner under any circumstances. Upon termination of the Rights and this Agreement, Lempster shall file a termination of this Agreement in the local public real estate records.

8. **MISCELLANEOUS.** This Agreement shall not and cannot be modified or amended except by a writing signed by both Parties. Whenever in this Agreement the approval or consent of a

Party is specifically required or mentioned, unless otherwise specified, such approval or consent shall not be unreasonably withheld, conditioned or delayed. If the Parties are unable to amicably resolve any dispute arising out of or in connection with this Agreement, then such dispute shall be resolved in the courts located in Sullivan County, New Hampshire, which shall be considered the proper forum and jurisdiction for any disputes arising in connection with this Agreement. If Owner consists of more than one person or entity, then (a) each reference herein to "Owner" shall include each person and entity signing this Agreement as or on behalf of Owner and (b) the liability of each such person and entity shall be joint and several. In the event that this Agreement is not executed by one or more of the persons or entities comprising the Owner herein, or by one or more persons or entities holding an interest in Owner's Property, then this Agreement shall nonetheless be effective, and shall bind all those persons and entities who have signed this Agreement. Owner acknowledges that Lempster has made no representations or warranties to Owner, including regarding development of, or the likelihood of power generation from, Owner's Property. Each of the signatories hereto represents and warrants that he/she has the authority to execute this Agreement on behalf of the Party for which he/she is signing. This Agreement may be executed in multiple counterparts.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

LEMPSTER WIND, LLC,
a Delaware limited liability company

By:_____
Martin Mugica, Manager

By:_____
Pablo Canales, Manager

OWNER:

_____

EXHIBIT A
TO WINDFARM NEIGHBOR AGREEMENT

LEGAL DESCRIPTION OF OWNER'S PROPERTY

EXHIBIT B

PAYMENTS TO OWNER

1. Initial Payment: $1,000 within thirty (30) days of the date of execution hereof.

2. Annual Payments: $1,000 per year (in accordance with Payment Schedule below).

Payment Schedule

Annual payments shall be paid as follows:

- The first annual payment will be made within thirty (30) days after Commercial Operation.
- All subsequent annual payments for each year of the term will be made annually on or before each anniversary of Commercial Operation, each as payment in advance for the following one-year period.

MEMORANDUM OF WIND FARM NEIGHBOR AGREEMENT

This is a memorandum ("Memorandum") of a Wind Farm Neighbor Agreement, dated _____, 2007 ("Neighbor Agreement") relating to the Lempster Wind Farm in Lempster, New Hampshire ("Wind Farm").

1. **PARTIES**. The parties to the Neighbor Agreement are Lempster Wind, LLC, a Delaware limited liability company, its successors and assigns, whose address for purposes of this Memorandum whose address for purposes of this agreement is c/o Iberdrola Renewable Energies USA, Ltd., 201 King of Prussia, Suite 500, Radnor, PA 19087 ("Lempster"), and , whose address is ("Owner").

2. **PROPERTY AFFECTED**. The Agreement affects the property of Owner legally described on attached **Exhibit A** ("Owner's Property").

3. **SUMMARY OF TERMS OF NEIGHBOR AGREEMENT**. The Neighbor Agreement includes a grant of noise, setback and other waivers and rights ("Rights") and establishes the rights of the parties and their duties to each other with regard to the Wind Farm.

4. **TERM OF NEIGHBOR AGREEMENT**. The term of the Neighbor Agreement ("Term") shall begin upon signing of the Neighbor Agreement, and shall end thirty (30) years after the Wind Farm begins Commercial Operation, subject to two (2) ten (10) year extension terms. "Commercial Operation" means the date the Wind Farm improvements are constructed, tested, interconnected with the transmission provider's transmission and distribution system, staffed and operational as determined by Lempster.

5. **TERMINATION**. The Rights and this Neighbor Agreement shall not be terminable by Owner under any circumstances. Upon expiration of the Rights and the Neighbor Agreement, Lempster shall file a termination of the Rights and the Neighbor Agreement in the public records.

6. **NOTICE.** This Memorandum is only intended to provide notice of the Neighbor Agreement, and is not intended to alter or amend the terms of the Neighbor Agreement. In the event of a conflict between the terms and conditions of this Memorandum, and the terms and conditions of the Neighbor Agreement, the terms and conditions of the Neighbor Agreement shall govern and prevail.

[SIGNATURES BEGIN ON NEXT PAGE]

EXHIBIT A
TO MEMORANDUM
OF WIND FARM NEIGHBOR AGREEMENT

LEGAL DESCRIPTION OF OWNER'S PROPERTY

Susan S. Geiger
sgeiger@orr-reno.com
Direct Dial 603.223.9154
Direct Fax 603.223.9054

Orr&Reno
Professional Association

One Eagle Square, P.O. Box 3550
Concord, NH 03302-3550
Telephone 603.224.2381
Facsimile 603.224.2318
www.orr-reno.com

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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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 48 MW Wind Turbine Facility in Groton, Grafton County, New Hampshire

ORDER ON MOTIONS FOR CLARIFICATION, REHEARING AND RECONSIDERATION

Issued August 8, 2011

I. PROCEDURAL HISTORY

On May 6, 2011, a duly appointed Subcommittee of the Site Evaluation Committee ("Subcommittee") issued its Decision granting a Certificate of Site and Facility ("Certificate") with conditions ("Decision") to Groton Wind, LLC, ("Applicant"), authorizing the construction and operation of a renewable energy facility ("Facility" or "Project") consisting of 24 Gamesa G82 turbines each having a nameplate capacity of 2 megawatts ("MW"), for a total nameplate capacity of 48 MW to be located in the Town of Groton, Grafton County, New Hampshire ("Site"). The Decision was issued after the Subcommittee held adjudicatory proceedings on November 1-5, 2010 and April 22-23, 2011. The Subcommittee heard from 21 witnesses, and considered over 162 exhibits, along with oral and written statements from interested members of the public. In addition, the Subcommittee held a public hearing in Grafton County, conducted a number of technical sessions, and visited the proposed Site. The Subcommittee's final Decision was the result of a rigorous review of the Application, the testimony, the exhibits, public comments and various pleadings filed by the parties.

On May 13, 2011, the Applicant filed a Contested Motion for Clarification. Thereafter, on June 5, 2011, the Buttolph/Lewis/Spring Group of Intervenors ("Intervenors") filed a Motion for Rehearing. The Applicant objected to Intervenors' Motion on June 15, 2011. On June 6, 2011, the Applicant filed a Contested Motion for Reconsideration and/or Rehearing. The Intervenors' Objected to Applicant's Motion for Reconsideration and/or Rehearing on June 11, 2011 and Counsel for Public Objected to the Applicant's Motion for Rehearing on June 16, 2011. On July 8, 2011, the Subcommittee held a public meeting for the purpose of deliberations.

II. STANDARD OF REVIEW

Under R.S.A. 541:2, any order or decision of the Committee may be the subject of a Motion for Rehearing or of an appeal in the manner prescribed by the statute. A request for a rehearing may be made by "any party to the action or proceeding before the commission, or any person directly affected thereby." R.S.A. 541:3. The motion for rehearing must specify "all grounds for rehearing, and the commission may grant such rehearing if in its opinion good

reason for the rehearing is stated in the motion." Id. Any such motion for rehearing "shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." R.S.A. 541:4.

"The purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon the record to which that decision rested." Dumais v. State of New Hampshire Pers. Comm., 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Commission finds "good reason". See, R.S.A. 541:3. A motion for rehearing must be denied where no "good reason" or "good cause" has been demonstrated. See, O'Loughlin v. NH Pers. Comm., 117 N.H. 999, 1004 (1977); Appeal of Gas Service, Inc., 121 N.H. 797, 801 (1981).

III. DISCUSSION

A. Applicant's Contested Motion for Clarification and Contested Motion for Reconsideration and/or Rehearing.[1]

The Applicant filed both a Contested Motion for Clarification and a Contested Motion for Reconsideration and/or Rehearing. The Motion for Reconsideration and/or Rehearing incorporates the Motion for Clarification. In the Motion for Clarification, the Applicant seeks clarification of a condition contained in the Certificate of Site and Facility (Certificate) requiring the Applicant to file an interconnection agreement with the Committee prior to the commencement of construction. The Applicant's Motion for Reconsideration and/or Rehearing addresses the conditions pertaining to post-construction bird and bat population and mortality studies. In addressing the post-construction bird and bat population and mortality studies, the Applicant alleges that the Decision and Order are unreasonable, arbitrary, unlawful and an abuse of discretion. Specifically, the Applicant asserts the following arguments in support of its Motion: (1) the Subcommittee allegedly failed to consider and overlooked the 2009 Lempster post-construction fatality survey report and the Stantec bird and bat risk assessment; (2) the bird and bat population and mortality studies condition is not supported by scientific evidence, record evidence or agency recommendations; (3) the conditions imposed by the Subcommittee are excessive; (4) the conditions imposed by the Subcommittee are unprecedented; and, (5) the conditions are overly burdensome and unreasonably expensive.

On June 11, 2011, the Intervenors objected to the Applicant's Motion for Reconsideration and/or Rehearing, asserting that the motion was not filed in a timely manner. On June 16, 2011, Counsel for the Public filed an Objection to the Applicant's Contested Motion for Reconsideration and/or Rehearing. In his Objection, Counsel for the Public asserts that the

[1] On May 13, 2011, the Applicant filed a Contested Motion for Clarification asking the Subcommittee to issue an order stating that its Order dated May 6, 2011 does not require the Applicant to file an interconnection agreement prior to commencement of the construction of the Project. See, Contested Motion for Clarification. However, on June 16, 2011, the Applicant filed with the Subcommittee its Contested Motion for Reconsideration and/or Rehearing asking the Subcommittee to reconsider and/or rehear the portion of the Order that requires the Applicant to file an interconnection agreement prior to the commencement of the construction of the Facility as addressed in its Motion for Clarification. See, Applicant's Contested Motion for Reconsideration and/or Rehearing. Therefore, the Subcommittee has determined to treat the Motion for Clarification as a Motion for Rehearing and addresses Applicant's Motion for Clarification as incorporated in its Motion for Reconsideration and/or Rehearing.

conditions are supported by the evidence in the record and are necessary for the approval of the Application. Counsel for the Public further alleges that the Subcommittee is not required to base its conditions exclusively on the record, but is authorized to include any conditions the Subcommittee deems necessary. Counsel for the Public notes that the financial burden associated with the post-construction bird and bat studies does not render the Applicant financially incapable to construct and operate the Facility. Therefore, according to Counsel for the Public, rehearing and/or reconsideration of the Subcommittee's Decision is inappropriate.

1. Timing of the Applicant's Contested Motion for Rehearing and/or Reconsideration.

The Intervenors allege that the Applicant filed its motion 31 days after the Subcommittee's Decision and, therefore, such Motion should be denied as untimely.

Under R.S.A. 541:3, a Motion for Rehearing must be filed within 30 days of the Decision. The Decision in this docket was issued on May 6, 2011. The thirtieth day following the date of the Decision was June 5, 2011, a Sunday. The Motion was filed on Monday, June 6, 2011.

Under NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, Site 202.08 (c), if the last day of the period allowed for filing falls on a Saturday, Sunday or legal holiday, then the time period should be extended to include the first business day following the Saturday, Sunday or legal holiday. In addition, in HIK Corp. v. Manchester, 103 N.H. 378, 381 (1961), the New Hampshire Supreme Court held that "when the terminal day of a time limit falls upon Sunday that day is to be excluded from the [time] computation." See also, Radziewicz v. Town of Hudson, 159 N.H. 313, 317 (2009). In addition, RSA 21:35, II provides: If a statute specifies a date for filing documents or paying fees and the specified date falls on a Saturday, Sunday or legal holiday, the document or fee shall be deemed timely filed if it is received by the next business day.

The Applicant filed its Motion for Reconsideration and/or Rehearing on June 6, which was the first business day following Sunday, June 5, 2011. Such filing was in compliance with the time limits set forth by RSA 541:3 (as interpreted per RSA 21:35, II) and in our administrative rules. Therefore, we find that the Applicant timely filed its Contested Motion for Reconsideration and/or Rehearing and deny the Intervenors' request to dismiss the Motion as untimely filed.

2. Condition Requiring the Submission of the Interconnection Agreement Prior to the Commencement of the Construction of the Project.

The Applicant asserts that the condition contained in the Subcommittee's Order and Certificate requiring the Applicant to file its interconnection agreement with the Subcommittee prior to the commencement of construction was not discussed in the Decision, or during deliberations by the members of the Subcommittee. The Applicant further alleges that the Subcommittee, in fact, unanimously rejected a condition "regarding the feasibility study," and erroneously included it in its Order. Motion for Clarification, ¶1. Therefore, the Applicant requests that the Subcommittee

reconsider its Order and find that the Applicant is not required to submit its interconnection agreement to the Subcommittee prior to the commencement of construction.

The Order and Certificate dated May 6, 2011, contains the following condition:

> Further Ordered that the Applicant shall continue to cooperate with the requirements of ISO New England and obtain all ISO approvals necessary to a final interconnection agreement for a gross unit rating up to 48 MW. Said interconnection agreement shall be filed with the Subcommittee prior to the commencement of construction.

A review of the record demonstrates that the Subcommittee discussed and considered the conditions requiring the Applicant to cooperate with the requirements of ISO New England and obtain all ISO approvals necessary to a final interconnection agreement. See, Tr., 4/11/2011, at 80-85. The Applicant does not assert that the condition requiring the Applicant to continue to cooperate with the requirements of ISO New England and obtain all ISO approvals was erroneously included by the Subcommittee in its Order. The Subcommittee finds that that condition requiring the Applicant to continue to cooperate with the requirements of ISO New England and obtain all ISO approvals is based on the record and was properly included in the Subcommittee's Order dated May 6, 2011.

The Decision does not contain a specific reference to the condition requiring the submission of the interconnection agreement to the Subcommittee prior to the commencement of the construction of the Project, nor did the Subcommittee discuss the pre-construction submission of the interconnection agreement to the Subcommittee during its deliberation. The inclusion of the condition in the Certificate appears to be a ministerial error. Therefore, the Subcommittee finds that good cause exists to grant the Applicant's request to clarify its Order and holds that the condition articulated in its order should have read as follows:

> Further Ordered that the Applicant shall continue to cooperate with the requirements of ISO New England and obtain all ISO approvals necessary to a final interconnection agreement for a gross unit rating up to 48 MW.

3. Conditions Requiring the Post-Construction Bird and Bat Mortality and Population Status.

The Applicant asserts that the Subcommittee should reconsider the conditions of the Decision and Order requiring the Applicant to conduct the post-construction bird and bat mortality and population studies. In support, the Applicant states the following reasons: (1) the Subcommittee failed to consider and overlooked the 2009 Lempster Post-Construction Fatality Survey Report and Stantec Bird and Bat Risk Assessment; (2) the conditions are not supported by scientific evidence, record evidence or agency recommendations; (3) the conditions are excessive; (4) the conditions are unprecedented; and (5) the conditions are unreasonably expensive.

a. 2009 Lempster Post-Construction Fatality Survey Report and Stantec Bird and Bat Risk Assessment.

The Applicant asserts that the Subcommittee's Decision to require the Applicant to conduct the post-construction bird and bat mortality and population studies should be reconsidered and/or reheard because the Subcommittee allegedly overlooked the 2009 Lempster Post-Construction Fatality Survey Report ("2009 Lempster Report") and the Stantec Bird and Bat Risk Assessment ("Stantec Risk Assessment").

i. 2009 Lempster Report

The Applicant asserts that due to the alleged failure to consider the 2009 Lempster Report, the Subcommittee "made erroneous assumptions regarding the usefulness and purposes of mortality surveys, i.e. it failed to acknowledge that those surveys can and do provide information regarding population level impacts." Applicant's Contested Motion for Reconsideration and/or Rehearing, ¶5. Furthermore, according to the Applicant, the examination of the 2009 Lempster Report would clearly demonstrate to the Subcommittee that "there is very little reason to suspect that impacts at the Groton project would be any different than at Lempster." Id. at ¶6.

A review of the record reveals that the 2009 Lempster Report and its results were discussed and considered by the Subcommittee on numerous occasions. For example, during the deliberations, Dr. Kent explicitly stated that "[p]ost-construction monitoring studies conducted at the Lempster Wind project in 2009 showed very low mortality for nocturnally migrating birds". Tr., 04/07/2011, Afternoon Session, at 27. Furthermore, the Subcommittee addressed the results of this Report as applied to raptor fatalities by specifically stating "[d]uring the first year of post-construction monitoring status at Lempster in 2009, no raptor fatalities were documented". Tr., 04/07/2001, Afternoon Session, at 29. Finally, as applied to the bat fatalities, the Subcommittee specifically acknowledged that the "[p]ost-construction studies conducted in 2009 at Lempster documented only one little brown bat fatality". Tr., 04-07-2011, Afternoon Session, at 30. The 2009 Lempster Report does not constitute new or previously overlooked evidence by the Subcommittee.

ii. Stantec Risk Assessment

The Applicant asserts that the Stantec Risk Assessment demonstrates that post-construction data from different sites can be used to form the basis of expert opinions regarding the degree and nature of the Project's anticipated impacts on birds and bats. Applicant's Contested Motion for Reconsideration and/or Rehearing, at ¶9. According to the Applicant, had the Subcommittee appropriately considered the Stantec Risk Assessment, it would have determined that data from different sites could be used to determine the impact of the Project on the environment and would not require the Applicant to conduct three years of post-construction bird and bat mortality and population studies.

The Subcommittee finds the Applicant's allegations that the Subcommittee failed to consider the Stantec Risk Assessment is without merit. A review of the record demonstrates that the Subcommittee specifically considered, addressed and discussed the Stantec Bird and Bat Risk Assessment. Following are examples of the instances where the Subcommittee addressed the Assessment and its results during its deliberation:

> [b]ird and bat risk assessment was prepared using the results of on-field surveys - - on-site surveys to . . . and a risk assessment sought to characterize the use of the project area and assess potential risks presented by the project to raptors, nocturnally migrating passerines, breeding birds and bats . . .

Tr., 04/07/2011, Afternoon Session at 27.

> The results of the bird and bat risk assessment prepared by the Applicant's consultants followed standardized weight-of-evidence approach . . . The results of the on-field surveys produced a low magnitude of potential impact to nocturnal migrants.

Tr., 04/07/2011, Afternoon Session at 28.

> The results of the bird and bat risk assessment predicted a low magnitude of potential impact to breeding birds.

Tr., 04/07/2011, Afternoon Session at 28.

> The results of the bird and bat risk assessment predict a low magnitude of potential impact to raptors.

Tr., 04/07/2011, Afternoon Session at 29.

> There's been a low documented peregrine falcon mortality at wind projects.

Tr., 04/07/2011, Afternoon Session at 29.

> The bird and bat risk assessment predicted a low magnitude of potential impact to raptors, including peregrine falcons.

Tr., 04/07/2011, Afternoon Session, at 30.

Furthermore, during examination of the Applicant's witness, Adam Gravel, the Subcommittee addressed the conclusions and recommendations contained in the Assessment by inquiring into the applicability of the post-construction mortality data from different wind sites to the Project. Tr., 11/04/2010, Morning Session, at 43-44. The Subcommittee explicitly asked Mr. Gravel whether he would recommend that the Subcommittee decide the issue of the

Project's effect on the environment by comparing it to the data received from the other wind projects. Tr., 11/04/2010, Morning Session, at 44. The Applicant's expert responded that the Subcommittee could determine this effect only by relying on the data contained in the Assessment. Tr., 11/04/2010, Morning Session, at 44. The Subcommittee also heard the testimony of Mr. Lloyd Evans concerning the Risk Assessment who stated that it contained insufficient data to conclude that the Project presents a low collision risk to birds and bats. Tr., 11/04/2010, Afternoon Session, at 65. Therefore, the Subcommittee finds that the record clearly demonstrates that the Subcommittee considered the Stantec Bird and Bat Risk Assessment, and scrutinized its conclusions and recommendations as applied to the Project.

The 2009 Lempster Report and Stantec Risk Assessment do not constitute "new" or different evidence warranting the rehearing or reconsideration of the Subcommittee's Order. Both exhibits were carefully considered by the Subcommittee, as was the competing testimony of Mr. Lloyd Evans. As a result, the Subcommittee denies the Motion for Rehearing based upon the fact that no new or different evidence that would change the Subcommittee's previous determination has been presented. O'Loughlin, 117 N.H. at 1004. The fact that the Applicant disagrees with the Subcommittee's conclusions does not constitute good reason for reconsideration or rehearing.

b. Record Evidence, Scientific Evidence, or Agency Recommendations

The Applicant argues that the Subcommittee's post-construction avian and bat conditions, as articulated in its Order and Decision, are unlawful, unreasonable, arbitrary, and an abuse of discretion because they allegedly are not based on the record, scientific evidence and/or agency recommendations. Specifically, the Applicant asserts that the conditions requiring the post-construction avian and bat mortality and population studies should be reconsidered and/or reheard for the following reasons: (1) there is no record evidence to support the type and extent of post-construction bird and bat studies required by the Subcommittee; (2) the conditions were developed, in part, in reliance on information that was not introduced in the record; specifically, the 2010 Lempster Post-Construction Fatality Survey; (3) the Subcommittee relied on draft federal guidelines documents which were not intended for public use; and (4) the conditions were based on assumptions that are not supported by scientific evidence, record evidence, or agency recommendations. We address each of the issues in turn.

The testimony and evidence in the record clearly demonstrated the need for the type and extent of post-construction studies required by the Subcommittee. The Subcommittee received the testimony of Dr. Trevor Lloyd-Evans, and testimony of the Applicant's expert, Adam Gravel, who agreed that pre-construction bird and bat studies are not indicative of the post-construction effect of the Project on local species and cannot be used to determine or estimate such effect. Tr., 11/03/2010, Morning Session, at 20; Tr., 11/04/2010, Morning Session, at 12; Ex. Buttolph 3, at 34. In addition, Mr. Lloyd-Evans, in his prefiled testimony, stated that he was "greatly concerned by the methods by which the Applicant will determine the importance of significance of mortality counts". Ex. PC 3. During the adjudicatory hearing, the Applicant's expert, Adam Gravel, was asked whether it is possible to determine the impact of the Project on the local population of birds and bats. Tr., 11/04/2010, Morning Session, at 46-47. In response, Mr. Gravel acknowledged that the bird and bat post-construction population surveys, if conducted,

would demonstrate the shift in species composition surrounding the Project and the mortality studies would show how many species are killed by the Project. Tr., 11/04/2010, Morning Session, at 46-48.

Accordingly, based on the testimony regarding the need for extensive post-construction studies and the Applicant's expert's assertion that mortality studies will demonstrate the number of species killed by the Project, while population studies will show the shift in their composition, the Subcommittee's conclusion that a combination of such studies represents a "very well thought out study design" and will demonstrate the actual impact of the Project on local birds and bats was reasonable and based on the record.

The fact that the Subcommittee relied on its members' understanding and knowledge of intricacies of statistical analyses does not warrant the reconsideration of its Decision. It is well settled that members of an adjudicatory body may base their conclusion upon their own knowledge, experience and observations in addition to expert testimony. See, Continental Paving, Inc. v. Town of Litchfield, 158 N.H. 570, 576 (2009) (determining the authority of the members of the Zoning Board of Adjustment). Subcommittee members are not barred from using their knowledge and common understanding of the issues, and are not obligated to disregard their knowledge and skills. The fact that the Subcommittee members use their knowledge and understanding of the issues in dispute, and the underlying science and data, does not render the Decision of the Subcommittee unreasonable, arbitrary, unlawful and an abuse of discretion.

The Subcommittee's decision to subject the Applicant to the post-construction survey conditions articulated in the Order and Decision was not based on facts contained in the 2010 Lempster Report. As discussed in Section 3 a, above, the Subcommittee's decision was based on testimony indicating that there is no correlation between pre-construction studies and post-construction mortality results. Therefore, the combination of mortality and population studies may demonstrate the actual effect of the Project on the environment.

The Applicant also asserts that the Subcommittee's Decision should be reconsidered because the Subcommittee considered draft federal guidance documents. It is the agency's province to weigh the evidence in the first instance. See, In Re Woodmansee, 150 N.H. 63, 68 (2003). The Subcommittee was aware that the policy guidance manuals from the United States Fish & Wildlife were not in their final form. Ex. PC 21, 22, 23, 24. These documents were identified as drafts and were referenced as such by the Subcommittee in its Decision. Decision, at 67. The fact that these drafts were not intended for the public use does not preclude reliance upon them by the Subcommittee, especially when the Subcommittee applies its independent scientific knowledge of the issues.

The Subcommittee denies the Applicant's request to rehear or reconsider the post-construction bird and bat mortality and population conditions. The Subcommittee finds that the record provides ample support for the Subcommittee's Decision and the Applicant has failed to provide new or different evidence that would change the Subcommittee's previous determination. The Applicant's request for reconsideration and/or rehearing regarding post-construction studies is denied.

c. Excessiveness, expensiveness, and uniqueness.

The Applicant asserts that the Subcommittee has never imposed such stringent post-construction bird and bat conditions on any other energy project it has certified and, therefore, such conditions are unreasonable and arbitrary. It further alleges that to comply with these conditions, it would have to spend between $1 million and $1.5 million. According to the Applicant, the implementation of this "burdensome" condition makes the Subcommittee's decision unjust and unreasonable.

Whether the Subcommittee has not required other energy facilities to conduct similar post-construction bird and bat studies does not, in itself, render the Subcommittee's decision unreasonable or arbitrary. In Appeal of Pub. Serv. Co. of N.H., 141 N.H. 13, 22 (1993) (citing and quoting Good Samaritan Hospital v. Shalala, 508 U.S. 402, 417 (1993)), the Court specifically stated that the agency's historic interpretation of public good "does not preclude it from adopting a new paradigm based on the change in concepts of what the public good requires." Id. During the deliberation, the Subcommittee acknowledged that in order to foster the declaration of purpose articulated in R.S.A. 162-H, it should learn from what had been done in the Lempster Project. Tr., 04/07/2011, Afternoon Session at 66. Specifically, the Subcommittee acknowledged that the statute and public policy require the Subcommittee to determine the actual effect of the Project on the natural environment and it would require the analysis of mortality surveys conducted in conjunction with other surveys. Tr., 04/07/2011, Afternoon Session at 66. This decision was not arbitrary or unreasonable, but, instead, was deeply rooted in the Subcommittee's determination that the protection of the natural environment requires analysis of the actual effect of the Project on birds and bats in the area and accurate estimation of the significance of such effect. Therefore, whether the Subcommittee previously applied the same conditions to any other renewable energy facility does not render the Subcommittee's decision unreasonable and/or arbitrary.

The Applicant's estimates of the cost of compliance do not constitute new facts, not previously considered by the Subcommittee, and do not warrant rehearing and/or reconsideration of the Subcommittee's Decision. The Subcommittee thoroughly considered the Applicant's financial capacity to construct and operate the Project in compliance with the Certificate. Decision at 34. While the studies required by the Certificate may be costly, the Subcommittee had sufficient reasons, as set forth in the record, to require them.

The Subcommittee denies the Applicant's request to rehear and/or reconsider the condition of the Subcommittee's Order and Decision and finds that the Applicant did not present any new or previously unconsidered evidence to demonstrate that the condition requiring post-construction bird and bat mortality and population studies is unreasonable or arbitrary.

B. Buttolph/Lewis/Spring Group of Intervenors Motion for Rehearing.

The Intervenors filed their Motion for Rehearing with the Subcommittee on June 5, 2011. The Intervenors ask the Subcommittee to reconsider its Decision, stating that the rehearing is warranted for the following reasons: (1) the Subcommittee failed to "strike a balance" between

the environment and the need for new energy facilities in New Hampshire; (2) the Subcommittee erroneously interpreted R.S.A. 162-H; (3) the Subcommittee violated due process by allowing the Applicant to submit its response to the Intervenors' Final Brief without giving the Intervenors an opportunity to be heard; (4) the Subcommittee made its Decision while it was "unclear of its own powers"; (5) the Subcommittee allegedly failed to properly weigh evidence and misstated facts; and (6) the Subcommittee allegedly inappropriately compared the Project to other wind energy facilities. The Applicant objected to the Intervenors' Motion for Rehearing on June 15, 2011. The Applicant urges the Subcommittee to deny the Intervenors' Motion for Rehearing, stating that the motion failed to specify or reference challenged provisions of the Decision or Order as required by R.S.A. 541:4. In addition, the Applicant asserts that due process was not violated where its response to the Intervenors' final brief did not contain new testimony, but simply provided an explanation of the Applicant's position.

1. Balance Requirements and Consideration of the Impact of the Facility Pursuant to RSA 162-H:16

The Intervenors argue that the Subcommittee improperly balanced the need for new energy facilities against the negative impacts to the environment in this case. This argument was articulated by the Intervenors in their Final Brief and rejected by the Subcommittee in the Decision. See, Decision, p. 37. In its Decision, the Subcommittee found that the Intervenors' balancing argument mistakenly conflates the general language of the declaration of purpose, R.S.A. 162-H:1, with the specific findings required under R.S.A. 162-H:16. In essence, the Intervenors argued, in their brief, and again in their Motion for Rehearing, that the Subcommittee should superimpose a generic balancing test in addition to considering the requirements of R.S.A. 162-H:16, IV. The Intervenor's Motion for Rehearing does not contain, in this regard, any new fact or evidence, nor does it indicate any overlooked facts or evidence in the record which would demonstrate that the Decision was unjust or unreasonable.

2. Due Process

The Intervenors assert that they were denied due process by the Subcommittee when the Subcommittee allowed the Applicant to submit a response to the Intervenors' Final Brief without giving the opportunity to the Intervenors to address the facts contained in that response.

Under the law, "where issues of fact are presented for resolution by an administrative agency, due process requires a meaningful opportunity to be heard". Appeal of Londonderry Neighborhood Coalition, 145 N.H. 201, 205 (2000). A review of the record demonstrates that the Applicant's response to the Intervenor's Brief does not contain any new facts upon which the Intervenors were denied a meaningful opportunity to be heard.

Fundamentally, the Intervenors mistake argument for testimony. Nevertheless, we address each of the Applicant's responses, in turn, as disputed in the Intervenors' Motion.

In response to the Intervenors' request number one, the Applicant stated the following:

> There is not credible support in the record for the proposition that this Project will effect property values within a two mile radius, or even at all. Such condition is unprecedented – neither of the other two wind energy facilities that have been certified by the Site Evaluation Committee is subject to this type of condition – and is arguably beyond the Committee's authority to order. Lastly, the condition is unworkable as it raises more questions than it answers, and creates significant enforcement/implementation responsibilities for the Subcommittee.

Applicant's Response to Conditions Proposed by Counsel for the Public and Intervenors, at 1-2. This response contains a conclusion that the Property Value Guarantee is unprecedented and has not been required in any other case before the Committee. The statement does not involve any new facts. It simply characterizes the record. By stating that the condition is "unworkable" the Applicant simply reiterated its position, which was already contested by the Intervenors' and other parties. The Applicant's response did not admit any more than an argument as to why the proposed condition should be rejected. The response did not trigger the need for further process.

Request 12D:

> It is unnecessary for the SEC to review or approve the Project's plans for dealing with issues related to oversized vehicles. Oversized vehicles are strictly governed by the New Hampshire Department of Transportation ("NH DOT") permits, and are accompanied by police escort vehicles. *See* Exhibit App. 46. Police at the scene need discretion to address any issues that arise. The Applicant will adhere to the detailed requirements of NH DOT oversized vehicle permits. *Id.*

Applicant's Response to Conditions Proposed by Counsel for the Public and Intervenors, at 7.

This response does not contain any new facts that were not available to the Intervenors during the course of the adjudicatory proceeding. In fact, Exhibit 46 was received on November 10, 2010 pursuant to a record request from the Committee. The Intervenors also referenced the exhibit in their post-hearing brief. See, Intervenors Brief at 16. There was no denial of due process.

Request 12E:

> The proposed condition is unwarranted, unjustified, and unsupported by any evidence, and there is no precedent for such a condition.

Applicant's Response to Conditions Proposed by Counsel for the Public and Intervenors, at 7. The Applicant's response to this request merely contains legal conclusions and does not contain any new statements of fact that require additional process.

Request 12F:

> . . . The Rumney Board of Selectmen requested and obtained provisions in its Agreement with the Applicant regarding public roads, including specific provisions regarding Groton Hollow Road. *See* Exhibit App. 7, Section 7. . . . The Rumney Agreement . . . was the result of extensive public consultations with the Town of Rumney Board of Selectmen . . . ."

Applicant's Response to Conditions Proposed by Counsel for the Public and Intervenors, at 7.

The fact that the Agreement with the Town of Rumney was reached as a result of extensive public consultations with the Town of Rumney Board of Selectmen does not contain a new or previously unaddressed statement of fact. The Subcommittee and all parties to this proceeding were privy to the fact that the Agreement with the Town of Rumney was developed as a result of negotiations with the Rumney Board of Selectmen and were given the opportunity to cross-examine about the extent of such negotiations. The Applicant's characterization of such negotiations as "extensive" does not introduce new statements of fact requiring additional process.

The Intervenors' claim that the Subcommittee permitted "new testimony" from the Applicant without providing an opportunity for cross-examination or dispute is meritless. In each of the instances cited by the Intervenors, the facts were part of the record, had been subjected to cross-examination by the other parties and by the Subcommittee, and were available for the Intervenors to dispute before the Subcommittee engaged in deliberation. The Applicant's responses to the proposed conditions of the Intervenors did not include new facts or evidence and were clearly nothing more than responsive arguments. Therefore, that portion of the Intervenors' Motion for Rehearing alleging a failure of due process is denied.

3. Awareness of the Powers of the Subcommittee by the Subcommittees' Members

The Intervenors argue that their Motion for Rehearing should be granted because the Subcommittee demonstrated that it was unclear of its powers. Throughout the proceeding in this docket, the Subcommittee had the assistance of Counsel for the Subcommittee. It is appropriate for Counsel to address legal concerns and questions that members of the Subcommittee might have. A question by a single member of the Subcommittee regarding a legal issue is not grounds for rehearing or reconsideration. Moreover, the denial of the intervenors request for a property value guarantee condition was not based upon legal concerns. The Subcommittee rejected the condition on the basis that it would be impractical to implement; see, Decision, p. 42; and that the evidence did not establish that any effect on property values would unduly interfere with the orderly development of the region. See, generally, Decision, pp. 37-42.

4. Weight of the Evidence and Misstatements of Fact

The Applicant further asserts that the Subcommittee gave improper weight to the evidence and made misstatements of fact. As previously articulated in this Order, the weight to be given to the testimony and evidence is solely within the Subcommittee's province. See, In Re Woodmansee, 150 N.H. at 68. During deliberation, the Subcommittee considered the weight it would give to the LBNL Study and to testimony of Mr. McCann. The fact that the Subcommittee attributed greater weight to the comprehensive analysis contained in the LBNL Study is not a basis for reconsideration or rehearing.

Additionally, the Applicant's assertion that the Subcommittee misstated facts is without merit. According to the Applicant, the Subcommittee mistakenly indicated that the Applicant had received the support of the Grafton County Commissioners from District 3, Martha P. Richards. The Intervenors point out that Ms. Richards was no longer the District 3 Grafton County Commissioner and that she had been replaced by Omer Ahern, Jr. At the time that the Subcommittee received Ms. Richards' letter, she was in office and the letter was written in her official capacity. While it is true that the Subcommittee received a letter from Mr. Ahern, after he became County Commissioner opposing the Project, that letter did not, in any way, identify Mr. Ahern as a County Commissioner nor does it appear to be written in his official capacity as a County Commissioner.

5. Consideration of Prior Decisions

The Applicant's final assertion is that the Decision should be reheard because the Subcommittee "inappropriately" considered its previous decisions. The Subcommittee is obligated to fully consider evidence and testimony introduced in the record and base its decision on the record. The conditions previously articulated by the Subcommittee for other renewable energy facilities in New Hampshire were submitted by the parties for the Subcommittee's consideration as a part of the record in these proceedings. The Subcommittee was obligated to give due consideration to these decision and conditions. In addition, the Subcommittee, as an adjudicatory body, has a right to consider precedent for guidance. Therefore, the consideration of the previous orders and decisions by the Subcommittee does not render its Decision unreasonable or unjust. For the reasons articulated above, the Intervenors' Motion for Rehearing is denied.

IV. CONCLUSION

Based upon the foregoing, it is hereby ordered that the Applicant's Motion for Clarification is **GRANTED** and the Order and Certificate in this docket shall be amended to delete the requirement that an interconnection agreement be filed prior to the commencement of construction. Instead, that ordering paragraph shall be amended to: "Further Ordered that the Applicant shall continue to cooperate with the requirements of ISO New England and obtain all ISO approvals necessary to a final interconnection agreement for a gross unit rating up to 48 MW.

Further Ordered that the Applicant's Motion for Reconsideration and/or Rehearing is **DENIED** in all respects except for the clarification set forth above; and it is,

Further Ordered that, the Intervenors' Motion for Rehearing is **DENIED**.

By Order of the Site Evaluation Committee this 8th day of August, 2011.

Thomas B. Getz, Chairman
Public Utilities Commission

Stephen Perry, Inland Fisheries Division Chief
Fish and Game Department

Robert Scott, Director
Department of Environmental Services

Eric Steltzer, Energy Policy Analyst
Office of Energy and Planning

Brook Dupee, Senior Health Policy Analyst
Department of Health and Human Services

Donald Kent, Designee
Dept. of Resources & Economic Dev.
Development

Richard Boisvert, State Archeologist
NH Division of Historical Resources

Charles Hood, Administrator
Department of Transportation

Michael Harrington, State Engineer
Public Utilities Commission

TITLE XII
PUBLIC SAFETY AND WELFARE
CHAPTER 162-H
ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

Section 162-H:1

162-H:1 Declaration of Purpose. – The legislature recognizes that the selection of sites for energy facilities, including the routing of high voltage transmission lines and energy transmission pipelines, will have a significant impact upon the welfare of the population, the location and growth of industry, the overall economic growth of the state, the environment of the state, and the use of natural resources. Accordingly, the legislature finds that it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire; that undue delay in the construction of needed facilities be avoided and that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion, all to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

Source. 1991, 295:1. 1998, 264:1, eff. June 26, 1998. 2009, 65:1, eff. Aug. 8, 2009.

Section 162-H:16

162-H:16 Findings and Certificate Issuance. –

I. The committee shall incorporate in any certificate such terms and conditions as may be specified to the committee by any of the other state agencies having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate under this chapter if any of the other state agencies denies authorization for the proposed activity over which it has jurisdiction. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency.

II. Any certificate issued by the site evaluation committee shall be based on the record. The decision to issue a certificate in its final form or to deny an application once it has been accepted shall be made by a majority of the full membership. A certificate shall be conclusive on all questions of siting, land use, air and water quality.

III. The committee may consult with interested regional agencies and agencies of border states in the consideration of certificates.

IV. The site evaluation committee, after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that the site and facility:
(a) Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.
(b) Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.
(c) Will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.
(d) [Repealed.]
V. [Repealed.]
VI. A certificate of site and facility may contain such reasonable terms and conditions as the committee deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such certificates, when issued, shall be final and subject only to judicial review.
VII. The committee may condition the certificate upon the results of required federal and state agency studies whose study period exceeds the application period.
Source. 1991, 295:1, eff. Jan. 1, 1992. 2009, 65:18-21, 24, IX, eff. Aug. 8, 2009.

TITLE XXXIV
PUBLIC UTILITIES
CHAPTER 362-F
ELECTRIC RENEWABLE PORTFOLIO STANDARD
Section 362-F:1
362-F:1 Purpose. – Renewable energy generation technologies can provide fuel diversity to the state and New England generation supply through use of local renewable fuels and resources that serve to displace and thereby lower regional dependence on fossil fuels. This has the potential to lower and stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices. The use of renewable energy technologies and fuels can also help to keep energy and investment dollars in the state to benefit our own economy. In addition, employing low emission forms of such technologies can reduce the amount of greenhouse gases, nitrogen oxides, and particulate matter emissions transported into New Hampshire and also generated in the state, thereby improving air quality and public health, and mitigating against the risks of climate change. It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.
Source. 2007, 26:2, eff. July 10, 2007.
Section 362-F:2
362-F:2 Definitions. – In this chapter:
I. "Begun operation" means the date that a facility, or a capital addition thereto, for the purpose of repowering to renewable energy is first placed in service for purposes of the implementing regulations of the Internal Revenue Code of 1986, as amended.
II. "Biomass fuels" means plant-derived fuel including clean and untreated wood such as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, biogas, or liquid biofuels, but shall exclude any materials derived in whole or in part from construction and demolition debris.
III. "Certificate" means the record that identifies and represents each megawatt-hour generated by a renewable energy generating source under RSA 362-F:6.
IV. "Commission" means public utilities commission.
V. "Customer-sited source" means a source that is interconnected on the end-use customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.
VI. "Default service" means electricity supply that is available to retail customers who are otherwise without an electricity supplier as defined in RSA 374-F:2, I-a.
VII. "Department" means the department of environmental services.
VIII. "Eligible biomass technologies" means generating technologies that use biomass fuels as their primary fuel, provided that the generation unit:
(a) Has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu), and an average particulate emission rate of less than or equal to 0.02 lbs/Mmbtu as measured and verified under RSA 362-F:12; and

(b) Uses any fuel other than the primary fuel only for start-up, maintenance, or other required internal needs.
IX. "End-use customer" means any person or entity that purchases electricity supply at retail in New Hampshire from another person or entity but shall not include:
(a) A generating facility taking station service at wholesale from the regional market administered by the independent system operator (ISO-New England) or self-supplying from its other generating stations; and
(b) Prior to January 1, 2010, a customer who purchases retail electricity supply, other than default service under a supply contract executed prior to January 1, 2007.
X. "Historical generation baseline" means:
(a) The average annual electrical production from a facility other than hydroelectric, stated in megawatthours, for the 3 years 2004 through 2006, or for the first 36 months after the facility began operation if that date is after December 31, 2001; provided that the historical generation baseline shall be measured regardless of whether or not the emissions from the facility during the baseline period meets emissions requirements of the class.
(b) The average annual production of a hydroelectric facility from the later of January 1, 1986 or the date of first commercial operation through December 31, 2005. If the hydroelectric facility experienced an upgrade or expansion during the historical generation baseline period, actual generation for that entire period shall be adjusted to estimate the average annual production that would have occurred had the upgrade or expansion been in effect during the entire historical generation baseline period.
XI. "Methane gas" means biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, septage, and landfill waste.
XII. "New England control area" means the term as defined in ISO-New England's transmission, markets and services tariff, FERC electric tariff no. 3, section II.
XIII. "Primary fuel" means a fuel or fuels, either singly or in combination, that comprises at least 90 percent of the total energy input into a generating unit.
XIV. "Provider of electricity" means a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II, but does not include municipal suppliers.
XV. "Renewable energy source," "renewable source," or "source" means a class I, II, III, or IV source of electricity or electricity displacement by a class I source under RSA 362-F:4, I(g). An electrical generating facility, while selling its electrical output at long-term rates established before January 1, 2007 by orders of the commission under RSA 362-A:4, shall not be considered a renewable source.
XVI. "Year" means a calendar year beginning January 1 and ending December 31.
Source. 2007, 26:2. 2008, 113:5, eff. Aug. 2, 2008; 368:3, eff. July 11, 2008.