

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

2011 Term

No. 2011-0640

Buttolph/Lewis/Spring Intervenor Group, pro se

v.

New Hampshire Site Evaluation Committee

Intervenor's Objection to Groton Wind LLC's Motion for Summary Disposition

dated September 13, 2011

Rule 10 Appeal from Administrative Agency

Appeal of Buttolph/Lewis/Spring Intervenor Group, pro se

Site Evaluation Committee Docket 2010-01

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**Buttolph/Lewis/Spring Intervenor Group Objection to
Groton Wind LLC Motion for Summary Disposition**

The Buttolph/Lewis/Spring Intervenor Group (the “Intervenors”) respectfully objects to the Groton Wind LLC (the “Applicant”) Motion for Summary Disposition filed with this Honorable Court on September 13, 2011. The Applicant’s motion requests that the Court, pursuant to N.H. Sup Ct R 25 (2), summarily dispose of the Intervenors’ appeal (the “Appeal”) by affirming the New Hampshire Site Evaluation Committee's (NHSEC's) Decision Granting Certificate of Site and Facility with Conditions (Decision).

1) In criticism of the Appeal, the Applicant asserts that no substantial question of law is presented by the Intervenors. The Applicant also asserts that the Intervenors did not satisfactorily explain why a “substantial basis exists for a difference of opinion on the question and why the acceptance of the appeal would protect a party from substantial and irreparable injury, or present the opportunity to decide, modify or clarify an issue of general importance in the administration of justice.” pursuant to N.H. Sup. Ct R. 10.

The Intervenors submit the following responsive comments.

The Intervenor's Appeal raises a substantial question of law

2) As noted in the Appeal, 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. RSA 162-H:1 states in part *“The legislature recognizes that the selection of sites for energy facilities...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**; ... 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” . RSA 162-H:1. (emphasis added.)

3) Further, RSA 162-H:16 IV states “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... **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 (b)... 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 (c). (emphasis added.)

4) When evaluating the balance between the environment and the need for this particular energy facility, the legislation commands that the SEC consider “relevant factors” in assessing the

extent to which the objectives of this chapter (as articulated in the declaration of purpose, noted above) would be best served by the issuance of the certificate. It is clear that the legislature did not intend for the NHSEC to ignore “relevant factors” that are crucial to the understanding of the degree to which this energy facility addresses the “need for new energy facilities” as stated in the RSA 162-H-1 Declaration of purpose. However, it appears after review of the record that the NHSEC did exactly that. The NHSEC clearly appeared to ignore the relevance of an assessment of the quantity of power that would most likely be produced, as well as an assessment of the degree to which this particular energy facility will mitigate greenhouse gasses.

5) Mr. Michael Harrington, SEC subcommittee member and PUC engineer, was tasked with the assignment of assessing the Intervenors’ balancing argument. (Deliberations 4/17/11 day 1 am Pg 29 lines 7-17). As noted in the Appeal, it appears that Mr. Harrington agreed with the Intervenors allegation that the potential for this particular renewable energy facility to reduce the amount of greenhouse gasses was likely overstated by the applicant. (Appeal Pg 8 lines 13-15). However, Mr. Harrington declared that even if the Applicant overstated the amount of clean energy generated by this facility, and/or the degree to which greenhouse gas would likely be mitigated, this information is “not germane” (i.e. irrelevant) (Deliberations Day 3, Pg 22 lines 1-6; pg 24 lines 1-18; pg 27 line 22-pg 28 line 11), in spite of the clear requirement to achieve a balance between needed energy and the environment pursuant to 162-H:1. The justification for this declaration of irrelevance can be found,

according to Mr. Harrington’s conclusions and interpretation, in the text of RSA 362-F¹.

(Deliberations Day 3, Pg 22 lines 1-8; Pg 22 line 23 - Pg 23 line 2).

6) RSA 362-F:1 states the following in part: “*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 ... 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.*** (Emphasis added.).

7) Mr. Harrington directed the thought process of the entire committee on this crucial point, and the NHSEC clearly followed suit. The question of law is this: Does the mere fact that an energy facility is defined as belonging to a “renewable energy source” category pursuant to RSA 362-F:2 XV render the extent to which these wind turbines actually generate electricity to be irrelevant information as the NHSEC establishes findings under RSA 162-H:16 (b) and (c)? The Intervenors submit that this information is highly relevant and crucial to the outcome of the findings. If the Legislature had intended for renewable energy facilities to be held to a different standard than other

¹ In the Intervenors’ Appeal, page 5, Rule 10 C, this RSA is referenced as RSA 352-H. This is a typographical error. This reference is corrected to 362-F.

energy facilities while the NHSEC deliberates and documents findings pursuant to RSA 162-H:16 IV, the Legislature would have expressly said so and referenced this fact directly in the text of RSA 162-H.

8) As a result of NHSEC's misinterpretation of its responsibilities under RSA 162-H, the context of the assessment of "reasonableness" that provided the backdrop for each and every finding listed in the Decision relative to RSA 162-H: 16 IV (b) and (c) is in question. Decision, sections C2 and C3. For example, if the Committee had found that the Applicant had very possibly overstated the capacity factor by 40 %, and had very likely overstated the extent to which this particular energy facility would mitigate greenhouse gas by a factor of 20:1 as asserted by the Intervenors, then the assessments of adverse effects by the NHSEC as well as other state and federal agencies may well have been very different. Governing bodies would have questioned why we would accept such risk when balanced against so little societal gain.

9) While the extent to which this facility contributes to the objectives of RSA 162-H is very much in question, the existence of significant adverse effects is not. The only question, as a matter of law, is whether these adverse effects are "reasonable". Among the recognized adverse effects are 1) mortality of birds and bats (4/8/11 Day 2 am Pg4 line 22- Pg 6 line 13; just Pg5 line 15-22), 2) the expected adverse effect on historic resources (4/8/11 Day 2 am Pg17 line 20 –Pg18 line2), 3) the risks to water quality (4/7/11 Day1 pm Pg8 line11; 4/7/11 Day 1 pm Pg 14 lines 15-18), 4) the unresolved safety risks to the residents of Groton Hollow Road during construction (4/8/11 Day 2 pm Pg 45 line 3-7; 4/8/11 Day 2 pm Pg 36 line 19-23), 5) Noise and possible impacts to human health (4/8/11 Day 2 am Pg106 line 20 – Pg 107 line1), 6) the reduction of property values (4/7/11 Day 1 am Pg 68 line 12-14; 4/7/11 Day 1 am Pg69 line 22 – Pg 70 line1; 4/7/11 Day 1 am Pg 93 line 4-5). Under the

circumstances listed above, the Intervenors believe the decision of the NHSEC to be “unjust or unreasonable” (pursuant to N.H. Sup. Ct. R 25 (1)) (C).

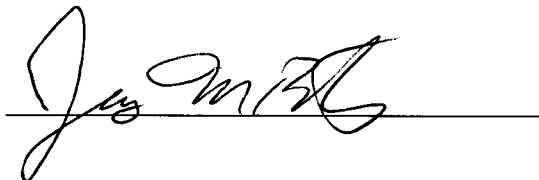
10) The NHSEC merely documents the estimated power output provided by the applicant in the application section of the Decision. (Decision Pg 5, paragraph 2), Nowhere else in the Decision is there any quantitative assessment of the power output, nor is there any NHSEC assessment as to the extent to which this energy facility will mitigate greenhouse gas. The applicants’ assertions are left completely unchallenged in this regard, and intentionally so, due to the position taken by the NHSEC that this information is not relevant. Accordingly, the acceptance of the appeal would present the opportunity to decide, modify or clarify an issue of general importance in the administration of justice.” pursuant to N.H. Sup. Ct R. 10.

11) The Applicant, in support of their motion, points out that this Honorable Court typically defers to administrative agencies, while the applicant articulates very few specifics relative to the merits of the Appeal. The mere fact that the Applicant articulates the view that there is no substantial question of law does not make it so. Using circular reasoning, the Applicant states that the mere fact that the NHSEC states that it reviewed and considered all relevant facts is evidence that this is true. The applicant also cites Granite Reliable as an example where the Court declined a “similar appeal” (see 2009-0889). However, other than the fact that the Granite Reliable docket relates to a wind farm with its associated and similar adverse effects, the grounds for appeal request in that action bear virtually no resemblance to this docket.

Wherefore, for the reasons discussed above, the Buttolph/Lewis/Spring Intervenor Group respectfully requests that this Honorable Court:

- A. Decline Groton Wind, LLC's Motion For Summary Disposition in its entirety
- B. Grant such other relief that it deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James M. Buttolph", is written over a horizontal line.

James M. Buttolph

on behalf of the Buttolph/Lewis/Spring Intervenor Group pro se

CERTIFICATION OF SERVICE

I hereby Certify that on this 22nd of September, 2011, I have forwarded a copy of the foregoing by first class mail, postage prepaid, to Groton Wind, LLC; the Attorney General of the State of New Hampshire; and the New Hampshire Site Evaluation Committee.

A handwritten signature in black ink, appearing to read "James M. Buttolph", is written over a horizontal line.

James M. Buttolph

on behalf of the Buttolph/Lewis/Spring Intervenor Group pro se