

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2010-01**

**RE: GROTON WIND, LLC**

**April 1, 2013**

**REPORT OF PREHEARING CONFERENCE**

On March 25, 2013, a prehearing conference was held in the above referenced docket. This memorandum will serve as a report of prehearing conference pursuant to RSA 541-A: 31, V (d).

**Notice**

Pursuant to RSA 541-A:31, V (b) a notice of the prehearing conference was provided to the service list by e-mail on March 14, 2013 and again on March 21, 2013 at which time a Memorandum and Outline of Agenda for the prehearing conference was distributed to the service list.

**Participants**

The following parties in this docket were present for the prehearing conference:

Groton Wind, LLC (Applicant) was represented by Susan Geiger, Orr & Reno. With Ms. Geiger were the following representatives from Iberdrola Renewables: Matthew Epstein, Edward Cherian, Doran Emmet.

Counsel for the Public, Senior Assistant Attorney General Peter C.L.Roth.

The Town of Groton was represented by Selectman Miles Sinclair.

The Town of Rumney was represented by Selectmen Edward Haskell and Daniel Kimble, Jr.

The Buttolph/Spring/Lewis consolidated intervenor group, *pro se*, by Carl Spring and Cheryl Lewis.

Marianne Peabody, intervenor, *pro se*.

In addition to the parties listed above the following interested individuals were present:

Mario Rampino, abutter.

Mark and Nancy Watson, Rumney residents.

Lisa Linowes, Industrial Wind Action (assisting the Buttolph /Spring/Lewis intervenor group.)

US Army Corps of Engineers represented by Richard Roach.

## **Background**

The Site Evaluation Committee (Committee) received two letters (Rumney Letters) from the Selectmen of the Town of Rumney raising issues pertaining to the obligations of the Applicant under the terms and conditions of its Certificate of Site and Facility. The Rumney Letters more specifically pertained to winter maintenance of the turbine roads within the project site, the reimbursement of first responder training and other expenses incurred by the Town of Rumney, and general communication concerns. The Committee also received a Motion to Re-Open the Record (Motion) filed by the Buttolph/Spring/Lewis intervenor group. The Buttolph Motion asserts that the Applicant impermissibly amended the terms of the Certificate and constructed the Operations and Maintenance (O&M) Building and two of the turbine towers in a location that was inconsistent with the Certificate. Counsel for the Public generally joined in the allegations asserted by the Buttolph/Spring/Lewis intervenor group and requested that the O&M building be removed and constructed in a location consistent with the original Certificate. The Applicant filed an objection to the Motion asserting that the Certificate was lawfully amended by the Department of Environmental Services under delegated authority.

On February 19, 2013, the Committee held an initial hearing regarding the Rumney Letters and the Motion. At the conclusion of the hearing, the Committee determined that an adjudicative hearing would be required to resolve the various disputes over the allegations set forth in the Rumney Letters and the Motion. Counsel to the Committee was asked to convene a prehearing conference to determine the scope of the adjudicative proceeding and to determine if any matters in dispute might be settled without the need for litigation. In addition, the prehearing conference was intended to address all issues that are permissible at such proceedings.

Prior to the prehearing conference, Counsel to the Committee circulated a Memorandum and Outline of Agenda to all parties. The Memorandum and Outline of Agenda set forth the issues raised in the Rumney Letters and the Motion. A copy of the Memorandum and Outline of Agenda is attached to this prehearing conference report.

This report will address the issue in the order set forth in the outline of agenda:

### **I. Groton Hollow Road Repairs (Resolved)**

Selectman Haskell reported that plans had been made with the Applicant for Groton Hollow Road to be studied with an engineering report from the Applicant's engineers by the first Monday after Memorial Day 2013. The parties also recognized that the recent weather situation

has not been conducive to a more aggressive schedule for the study and report. Mr. Haskell and the Applicant both indicated that they felt that this issue was resolved and that further action by the Committee was unnecessary. No other party expressed disagreement. **This issue should be considered to be resolved.**

## **II. Status of Communication Issues.**

Selectman Haskell reported that the Board's concerns about communication issues have been resolved with the hiring of the new plant manager, Ryan Haley. Mr. Haskell reports that Mr. Haley has been responsive and has met with Town officials as required. Mr. Haskell and the Applicant agree that this matter has been resolved. No other party expressed disagreement. **This issue should be considered to be resolved.**

## **III. Reimbursement to Rumney for Costs Associated with the "Superload Delivery."**

Selectman Haskell reported that the Town of Rumney has been "paid in full" with respect to the "superload delivery." **Therefore this issue is resolved.**

## **IV. Reimbursement for the Town of Rumney Administrative Assistant's Time.**

Selectman Haskell reported that the Town of Rumney is withdrawing this complaint. He reports that the Town did not keep sufficient records to determine or prove an amount to be reimbursed. Ms. Lewis indicated that she believed that the Town could establish an amount of time with a little more effort. She also raised concerns about the use of the administrative assistant's time going forward. No other party expressed concern with the withdrawal of this claim by the Town of Rumney. **The issue does not require resolution by the Committee because it has been withdrawn.**

## **V. Rampino Property.**

Mr. Rampino reported that he has met with representatives of Iberdrola Renewables and that his well water was checked for quality and pressure problems. He reported that he reached a settlement of his well issues with the Applicant and received a check in the amount of \$5,000.00. However, further discussion with regard to the settlement reveals that there may be a dispute over the terms of the settlement and whether Mr. Rampino has settled all of his claims by signing a general release. It was established that there is no prohibition on Mr. Rampino testifying as a witness or providing information to the Committee as part of the settlement. The existence of any remaining claims by Mr. Rampino against the Applicant for damages to his individual property is the matter of a private dispute and need not be determined by the Committee. **These issues as they pertain specifically to Mr. Rampino are considered to be resolved.**

## **VI. Training Curriculum and Training Expenses.**

Mr. Haskell reported that he had spoken with his Town's fire chief and that the Town of Rumney was no longer requesting that its emergency responders be trained to climb turbine towers.

He also reported that the bill for the training that had occurred had been paid by the Applicant. Going forward, however, the Applicant will provide the training but not reimbursement of wages for the emergency responders to attend the training. Mr. Sinclair reported that as part of the negotiation of the emergency response contract between the Town of Groton and the Town of Rumney it is possible that the payment of wages for Rumney responders would be paid by the Town of Groton going forward. While this agreement is not finally approved, it is under serious consideration between the towns. It should be noted that the contract between the towns extends over an area that is much larger than the project area and addresses issues that have nothing to do with the Groton Wind facility.

Intervenors raised the issue that, as far as they were aware, no training for responders has occurred since the construction of the towers. The Applicant and Mr. Haskell pointed out that there was a training that occurred in May 2012 before the completion of construction and a further training in October 2012. Ms. Lewis indicated that she did not believe that the October event was an actual training and was much more like a "tour" of the facility. The Applicant disagrees with that characterization and also pointed out that the Rumney emergency personnel were invited to schedule a further training and that invitation was memorialized in a Memo from Anne Dow, Rumney administrative assistant, to the various emergency directors dated February 8, 2013. **Since the Town of Rumney is no longer seeking the controversial turbine climbing training and it appears that trainings have occurred and are continuing subject to scheduling issues, there is nothing left to be resolved with regard to this issue.**

## **VII. Turbine Access Road Safety and Maintenance Issues.**

Mr. Haskell reported that this item is still of concern and that no resolution has yet been reached. The Town of Rumney asserts that plowing, sanding and full winter maintenance is required under the terms of the agreement executed between the Town of Groton and the Applicant that was incorporated as a condition of the Certificate. The Applicant asserts that it has provided three large track vehicles and a "gator" type four wheel drive vehicle at the site for the purpose of equipping and staffing any emergency operations. The Applicant asserts that emergency responses will be more safely conducted without plowing and sanding and that the plowing and sanding of the turbine roads is unsafe due to steep grades and high altitude conditions. The Town of Groton represents that it is in favor of pursuing whatever course of action is safest for all emergency responders, contractors and employees who may find themselves on the site. The issue really can be condensed to the main question of what presents the safest and most environmentally sound way to maintain the turbine roads.

After discussion, the parties essentially agreed that the wrong people were in the room for this decision. It was determined that Counsel for the Committee would convene a meeting of the

Applicant, Fire Chiefs and EMS directors for the Towns of Rumney and Groton. Other local fire chiefs and EMS directors will also be invited. The State Fire Marshall, a Fish and Game representative and the local fire commissioners would also be invited. The meeting will be held in the evening and locally. A verbatim record of the meeting will be made. The public will be permitted to attend the meeting. If necessary, a site visit will occur as well. The purpose of the meeting will be to see if the Applicant, the chiefs and directors can come to an agreement as to safest manner in which to maintain the turbine roads and ensure emergency access. Counsel for the Committee will attempt to obtain an agreement as to a resolution of the issue. That agreement will be presented to the parties and presumably to the committee for approval. It is hoped that this meeting can be arranged within the next 30 days.

### **VIII. O&M Building and Motion to Reopen**

At the time of the February 19, 2013 hearing, Counsel for the Public along with the Buttolph intervenor group were of the opinion that the O&M Building and two turbines were constructed in violation of the Certificate and must be removed. The Applicant answered that the O&M Building and the turbines were all properly sited pursuant to the Certificate as amended by DES under a delegation of authority from the Committee. The Applicant also asserted that it had made a proposal to the abutting landowners to provide a vegetative buffer for the purpose of mitigating the appearance of the O&M building to abutting and local properties. Ms. Peabody and Mr. Rampino both pointed out that the present proposal would take years to come to fruition as a true buffer and indicated that they were dissatisfied with the landscape plan as it currently exists. The Applicant asserted that it was willing to work with and cooperate with the neighbors in an effort to come to an agreement on an appropriate buffer plan.

Counsel for the Public indicated that regardless of whether the neighbors reach a settlement on a buffer, the public interest must also be satisfied. Relying on his response to the intervenor's Motion, Counsel for the Public believes that the Applicant must also make appropriate remediation to the public for what he sees as a violation of the Certificate. For lack of a better term, Counsel for the Public believes that a "penalty" should be imposed on the Applicant. Understanding each of the parties' position on this issue, Counsel to Committee inquired if the parties would consider participating in good faith in a course of mediation to see if a global agreement could be reached on this issue. Counsel for the Public and the Applicant both asserted that the parties must be amenable to working together under Counsel for the Public's direction in any mediation efforts. The role and process of mediation was explained to the parties. The parties all agreed to consider a mediation approach to the issue.

The parties also agreed to the following deadlines for the mediation process:

By April 8, 2013, the intervenors will confer with Counsel for the Public and determine if they can find common ground amongst themselves to pursue the mediation and will report to Counsel to the Committee. The report to Counsel to the Committee will be drafted by Counsel for the Public and advise as to whether the parties do share common ground and if so, whether they prefer that the mediation be conducted by Counsel for the Committee or a different neutral.

The mediation session will be scheduled to occur between April 8, 2013 and May 1, 2013.

A further pretrial hearing will be held on May 7, 2013 at which time a report will be provided on the results of the mediation. If settlement is not achieved, the parties will then revert to a traditional prehearing conference with an eye toward scheduling an evidentiary proceeding. At the prehearing conference on May 7, 2013, there will also be a final report on the progress made, if any, on determining the manner in which the turbine roads should be maintained and emergency access ensured.

Undersigned counsel would point out that the conduct of the parties at this prehearing conference was exemplary. Many of the less serious issues were resolved in a swift and cordial manner. All parties expressed a willingness to pursue a non-adversarial approach to resolve the outstanding issues.

April 1, 2013

A handwritten signature in black ink, appearing to read "Michael J. Iacopino". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Michael J. Iacopino, Counsel  
NH Site Evaluation Committee