

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2010-01**

**RE: GROTON WIND, LLC**

**November 4, 2013**

**REPORT OF PREHEARING CONFERENCE**

On October 2, 2013, a prehearing conference was held in the above referenced docket. Counsel to the Committee Michael J. Iacopino presided. 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 August 13, 2013. A corrected notice was provided to the service list on September 4, 2013, and again on September 24, 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 Attorney Susan Geiger, Orr & Reno and Attorney Mark Epstein, Iberdrola Renewables. Karl Deloof and Michael Clayton of Groton Wind LLC were also present.

Counsel for the Public, Senior Assistant Attorney General Peter Roth appeared along with Senior Assistant Attorney General K. Allen Brooks.

Assistant Attorney General Karen Schlitzer appeared on behalf of the Department of Safety, Office of the State Fire Marshal. Inspector Ron Anstey also appeared.

Board of Selectmen Chair, Edward Haskell, appeared on behalf of the Town of Rumney.

Chreryl Lewis, *pro se*, appeared on behalf of the Buttolph Spring Lewis intervenors.

Marianne Peabody appeared *pro se*.

Also attending the conference were:

Mario Rampino, abutter. On the day after the conference Mr. Rampino filed a motion to formally intervene in the proceedings.

Greg Saulnier, abutter.

Mark Watson, abutter. At the time of the conference Mr. Watson had a pending motion to intervene in the proceedings.

State Senator Jeanie Forrester (District 2)

State Representative Suzanne Smith (Grafton – District 8)

Selectman Ken Sullivan, Town of Temple

Lisa Linowes, Industrial Wind Action Group

Eric Werme, Boscawen NH

Jennifer Tuthill, Wind Watch

Robert Piehler, Wind Watch

Lisa Linowes, Industrial Wind Action Group

## **Summary of Issues Raised and Addressed**

### **1. Road Maintenance and Safety Plan.**

Counsel for the Committee explained that it was his understanding that an agreement in principle had been reached between the Applicant and local fire and safety officials regarding a safety and maintenance plan. However, a signed agreement had not yet been provided. Counsel indicated that a final agreement was necessary so that other parties could review the plan and express objections if any. The final plan is also necessary to be presented to the Committee as an amendment to the Certificate.

Mark Epstein from Iberdrola confirmed that there was an agreement and that a plan was written up and distributed for signatures by the various safety officials. He reported that it would probably take between five and ten days to get a fully signed agreement distributed to the service list. Mr. Epstein and all other parties agreed that he should distribute the draft plan to all parties by October 4, 2013 and file the final written plan by October 11, 2013. The draft was distributed on October 4, 2013. The final plan was filed with the Committee on October 11, 2013. It has been posted to the Committee's web site. Counsel for the Public filed a response to the plan on October 18, 2013.

The parties agreed that a period of two weeks would be sufficient to review the maintenance and safety plan. Objections to the proposed safety and maintenance plan will be due by November 18, 2013.

## **2. Operations and Maintenance Building/Motion to Re-Open**

Discussion regarding the operations and maintenance (O&M) building revealed that an evidentiary hearing will likely be necessary as the parties are unlikely to reach agreement. It was also reported that no further individual settlements had been reached between Groton Wind and the abutters or residents of Groton Hollow Road. Counsel for the Public and some of the intervenors indicated that they have not received any additional information from the Applicant and therefore were not in a position to discuss whether there remains a claim that the turbines themselves were constructed in an area different than required in the Certificate. There is significant disagreement amongst the parties regarding the authority of the Department of Environmental Services to approve the modification of the plan resulting in the new location of the O&M building and the alleged change in turbine locations. These issues will eventually require an adjudicative hearing. It is noted that adjudicative resolution of these issues may result in the suspension and revocation of the Certificate of Site and Facility.

## **3. Written Request of the Fire Marshal to Suspend the Certificate.**

Inspector Ron Anstey from the Office of the State Fire Marshal reported that his agency has four major concerns about the Facility. Those concerns are: 1) the Fire Marshal has not received any plans from the Applicant; 2) the Fire Marshal has not been able to conduct inspections of the turbines; 3) the Fire Marshal has not received a response to its comments on the O&M Building plans; 4) there is no fire suppression system in the turbine nacelles which the Fire Marshal asserts is required by code. The Applicant disputes the authority of the Fire Marshal under state statute and under the applicable fire, building and life safety codes. However, the Applicant also informed the parties that it may have discovered a fire suppression system proposal

that may resolve the Fire Marshal's concerns. Nevertheless the Committee should treat these issues as requiring an adjudicative proceeding that may result in the suspension and possible revocation of the Certificate of Site and Facility.

### **Procedure**

After considerable discussion regarding the best manner in which to proceed, all parties agreed that it would be necessary to first have the Committee determine two threshold legal questions:


- 1.) Did DES have the authority to modify the Certificate regarding the placement of the O&M building and potentially some of the turbines?
- 2.) Does the Office of the State Fire Marshal have the authority to regulate the project and does he have the authority to request suspension of the certificate in the manner contained in Inspector Anstey's letter dated August 12, 2013?

All parties agreed that it would be best to brief these two legal issues for resolution by the Committee before a further procedural schedule is set. It was further agreed that the parties would have thirty days to prepare opening briefs. Responsive briefs would be due thirty days thereafter. The parties suggest that an order from the Committee would issue about 30 days later and then if necessary, a further prehearing conference would be scheduled in order to determine discovery deadlines and a final merits hearing date.

A further procedural order shall issue requiring the parties to file opening briefs by December 4, 2013. Responsive Briefs shall be due by January 5, 2013. A further prehearing conference will be held during the week of January 27, 2013.

**Further Procedural Order**

The Chairman will issue a further procedural order for the balance of the proceedings.

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.

November 4, 2013

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Michael J. Iacopino, Esq.  
Counsel to the Site Evaluation Committee