

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2010-01**

**RE: GROTON WIND, LLC**

**January 31, 2014**

**REPORT OF PREHEARING CONFERENCE**

On January 30, 2014, 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 January 9, 2014. On January 30, 2014, Counsel to the Committee circulated a Memorandum and Outline of Agenda for the prehearing conference 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 Toan Nguyen, Senior Counsel, Ibedrola Renewables.

Counsel for the Public, Senior Assistant Attorney general Peter Roth was represented by Senior Assistant Attorney General K. Allen Brooks.

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

Mario Rampino was represented by Attorney Justin Richardson, Upton & Hatfield.

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

The Town of Groton was represented by Selectman, Miles Sinclair.

Lisa Linowes and Cheryl Lewis, *pro se*, appeared on behalf of the Buttolph Spring Lewis intervenors.

Mark Watson appeared, *pro se*.

Marianne Peabody appeared *pro se*.

Also attending the conference were:

State Representative Suzanne Smith (Grafton – District 8)

Eric Werme, Boscawen NH

Jennifer Tuthill, Wind Watch

Robert Piehler, Wind Watch

Edna Pickler

George Tuthill

Sarah Allen

Raymond Landry

### **Issues**

At the outset of the prehearing conference, all parties agreed that the following issues are outstanding:

1. The status of the road safety and maintenance agreement otherwise referred to as the Environmental Health and Safety Plan and whether or not the facility is in compliance with the terms of its Certificate pertaining to that particular plan.

2. Whether the Certificate of Site and Facility should be amended as it pertains to the safety and maintenance plan otherwise known as the Environmental Health and Safety Plan.

3. Should the motion to re-open the record that was filed by the Buttolph/Lewis/Spring intervenor group be granted?

4. Is the facility in compliance with the terms and conditions of the Decision and Certificate of Site and Facility as they pertain to the location where the operations and maintenance building and the location of the individual turbines are presently as actually built?

5. Should the request of the Fire Marshal to suspend the Certificate be granted?

6. Should the Applicant's motion to amend the Certificate be granted?

7. Individual intervenors have raised issues and may have reached or come close to reaching settlement agreements with the Applicant.

All of the parties were asked whether or not there were any other issues that they perceived to be pending before the Committee. All parties answered in the negative.

### **Report on Settlement Negotiations**

#### **Intervenors and Abutters**

Settlement negotiations have continued with intervenors and abutters.

By letter dated January 29, 2014, Gregory Saulnier, an abutter and intervenor, *pro se*, notified the Committee that he had reached a settlement with the Applicant. Mr. Saulnier withdrew all of his claims, and challenges as well as any letters, protests or oral or written

statements previously submitted to the Committee. Mr. Saulnier also asked to be removed from the service list in this docket.

Attorney Justin Richardson advised that his client, Mario Rampino, also reached a settlement with the Applicant. The paperwork pertaining to that settlement has been distributed for signatures. Mr. Richardson reported that upon execution he anticipated that he would withdraw all claims and positions advanced by Mr. Rampino in this proceeding. Mr. Rampino withdrew all claims and positions previously taken on February 12, 2014.

The Applicant also reported that it extended an offer to settle the claims advanced by Marianne Peabody, an abutter and intervenor, *pro se*. Ms. Peabody reported that she had received the offer and considered the negotiations to be “in the initial stages.” Both parties anticipate ongoing discussions.

### **Fire Marshal**

The Applicant reports that it has engaged in ongoing discussions with the Fire Marshal. Inspector Anstey conducted a site visit at the facility. The Applicant provided Inspector Anstey with a proposal for the installation of fire suppression systems in the nacelles of each turbine. The Fire Marshal is in the process of reviewing that proposal. Discussions between the Applicant and the Fire Marshal continue and appear to be going well. However, the Fire Marshal requested that the issues raised in his letter be resolved by the Site Evaluation Committee before the beginning of “fire season.” Because of concerns about the upcoming fire season, the Fire Marshal requested fast track discovery and an early hearing. In addition, the Fire Marshal also requested that discovery and preparation for an adjudicatory hearing on the issues raised in his filings continue despite the ongoing positive settlement negotiations. Finally, the Fire Marshal and all parties

agreed to bifurcate the issues raised by the Fire Marshal from the balance of the issues in this matter and to schedule an early hearing thereon. Counsel to the Committee advised the parties that he would recommend a bifurcated process to the Chair.

### **Turbine Road Safety and Maintenance**

There has been no settlement of the turbine road safety and maintenance issues. On October 11, 2013, the Applicant submitted a document entitled “Environmental Health and Safety Plan” (Safety Plan). The Applicant reported that the Safety Plan was agreed to by certain safety officials from the Towns of Groton and Rumney. The Town of Rumney denies that there is an agreement. Counsel for the Public, the Fire Marshal and some of the intervenors have also objected to the Safety Plan. The Committee was advised that as of December 31, 2013, the Town of Rumney is no longer providing EMS services to Groton. However, Rumney apparently continues to provide EMS services according to the representatives of each town. Negotiation between the two towns for the provision of emergency services is an ongoing matter.

Despite efforts to resolve the safety and maintenance issues pertaining to the turbine roads, it appears that these matters remain unresolved and will require a hearing.

The Applicant reports that it is engaged with the Town of Groton in negotiating an amendment to the agreement with the Town that will address the turbine roads, maintenance and safety issues. Upon agreement between the Town and the Applicant, the proposed amendment will be distributed to the parties and ultimately presented to the Committee for approval. If the proposed agreement lacks assent by all parties, a contested hearing will be need to be held.

Counsel to the Committee encouraged all parties to seek agreement on these very important safety issues.

## **Stipulations**

### **Bifurcation of Fire Safety Issue**

All parties present agreed to the bifurcation of the fire safety issues raised by the Fire Marshal in his letter seeking suspension of the Certificate dated August 12, 2013. In order to accommodate bifurcation, the parties all stipulated to the following discovery schedule with regard to the issues raised by the Fire Marshal:

The Fire Marshal shall submit prefiled direct testimony by March 3, 2014

A Technical Session addressing the Fire Marshal testimony shall be scheduled for the best available date between March 13, 2014 and March 20, 2014. (Fire Marshal Technical Session)

The Applicant and other parties (including Counsel for the Public and all intervenors) shall submit prefiled testimony within 30 days after the Fire Marshal Technical Session.

A Technical Session addressing the prefiled testimony of the Applicant and other parties will be scheduled not sooner than ten days nor less than seventeen days after the submittal of said prefiled testimony. (Applicant Technical Session)

Supplemental Prefiled testimony from all parties will be submitted no later than 20 days after the Applicant Technical Session.

All parties shall file an Exhibit List detailing all exhibits to be relied on during the adjudicatory hearing not later than ten days after the deadline for filing of Supplemental Prefiled Testimony.

The parties all stipulate to request that the Committee hold a hearing limited to the issues raised in the Fire Marshal's letter dated August 12, 2013 within 14 days of the filing of exhibit lists.

An adjudicatory hearing limited to the issues raised in the Fire Marshal's letter dated August 12, 2013, will commence on the morning of June 12, 2014. While this date may be after the commencement of "fire season", it is the earliest date upon which the Committee can convene after affording all parties their due process and discovery rights.

**Remaining Issues Pertaining to Suspension/revocation or Enforcement of the Certificate and Other Relief Sought by Counsel for the Public and Intervenors.**

It is anticipated that a second adjudicatory hearing will be required on the remaining issues. In this regard, the parties have agreed that Counsel for the Public shall commission a survey of the facility for the purpose of determining if the "as built" plans are accurate. Counsel for the Public and the Applicant will agree on when and how the survey is to be performed and who is to perform it. It is understood that the survey will not be able to be performed until it is safe to do so in the spring. In any event, all parties agree that the survey should be performed and completed in advance of June 30, 2014. The parties agreed that the balance of the proceedings will be conducted according to the following schedule:

Counsel for the Public and any party seeking suspension/revocation or enforcement of the Certificate (Moving Parties) shall file their prefiled testimony by June 30, 2014.

The Applicant may submit data requests to the moving parties on or before July 21, 2014.

The moving parties shall respond to the Applicant's data requests on or before August 11, 2014.

A technical session with the Moving Parties' witnesses will be scheduled in the time frame between August 21, 2014 and August 29, 2014. (Moving Parties Technical Session)

Counsel for the Committee will endeavor to arrange this technical session to accommodate the schedules of the parties.

The Applicant shall file its prefiled testimony not later than 20 days after the Moving Parties' Technical Session.

The Moving Parties may issue data requests to the Applicant not later than 20 days after the Committee receives the Applicant's prefiled testimony.

The Applicant will have 20 days to respond to the Moving Parties' data requests.

A technical session with the Applicant's witnesses will be conducted not less than 10 nor more than 17 days after the Applicant responds to the Moving Parties' data requests. (Applicant's Technical Session). Counsel for the Committee will preside at the technical session and will try to accommodate all parties in the scheduling thereof.

Supplemental prefiled testimony from all parties will be filed within 20 days after the Applicant's Technical Session.

Exhibit lists will be filed 10 days after the filing of supplemental prefiled testimony. (It is estimated that this will occur sometime around December 18, 2014).

A final adjudicatory hearing on all outstanding issues will be held at least 10 days after the filing of exhibit lists. (It is likely that this hearing will be scheduled during the first 2 weeks of January, 2015).

In addition to the foregoing schedules which have been agreed upon by the parties, the following deadlines shall apply as well:

1. The Applicant shall provide a preliminary comparison demonstrating the differences between the original proposed plans and the as-built plan by March 10, 2014.



2. The Applicant and Counsel for the Public shall file an exhibit containing all of the written correspondence between the Applicant and the Department of Environmental Services by February 28, 2014.

3. The Applicant and the Fire Marshal shall file an exhibit containing all of the correspondence between the Office of the Fire Marshal and the Applicant by February 28, 2014.

4. The Applicant shall file a statement identifying the building codes, life safety codes, and fire codes that it asserts are applicable to the Project, along with copies thereof by March 14, 2014.

5. To the extent that any deadline contained herein falls on a weekend, holiday or non-business day, the deadline shall be interpreted to fall on the next business day.

### **Outstanding issues**

The Buttolph/Lewis/Spring group of intervenors has requested authority to be on site at the Project during the survey to be conducted by Counsel for the Public or his experts. The Applicant objects to that request. The Applicant asserts that the presence of civilians at the Project raises safety concerns. The Chair will issue a decision with respect to the request in the near future.

The Chair will issue a final procedural order incorporating all of the deadlines and dates set forth herein and scheduling the adjudicatory hearings referenced herein.

The parties are encouraged to cooperate with each other in the trading of information and performing discovery. It is understood that Counsel for the Public and some of the intervenors

may request the production of certain documents from the Applicant. If agreement is not reached with respect to the production of documents, a timely motion must be filed with the Committee for ruling by the Chairman.

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.

February 19, 2014

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Michael J. Iacopino  
Counsel, NH Site Evaluation Committee