

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 Renewable Energy Facility in Groton, N.H.

February 20, 2014

PROCEDURAL ORDER AND NOTICE
OF POSSIBLE SUSPENSION OF CERTIFICATE OF SITE AND FACILITY

To Groton Wind LLC: You are hereby notified that the Site Evaluation Committee has received correspondence alleging that you are operating the Facility in the above referenced docket in violation of the terms and conditions of the Certificate of Site and Facility. The proceedings described herein may result in a determination that you are in violation of the terms and conditions of the Certificate of Site and Facility issued in this docket (and the Decision underlying such Certificate). If found to be in violation of the Certificate or Decision, the Certificate may be suspended and/or revoked pursuant to the provisions of RSA 162-H: 12, RSA 541-A: 30 and RSA 541-A: 31.

Background

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). On October 14, 2011, the New Hampshire Supreme Court issued an order declining to review the Decision on appeal.

The Applicant subsequently constructed the Facility. The Facility has commenced commercial operations.

On December 31, 2012, the Committee received a letter from the Selectmen of the Town of Rumney expressing concerns about the safety and maintenance of the turbine roads within the Site. On January 11, 2013, the Applicant delivered a letter to the Committee responding to the concerns raised by the Town. On January 16, 2013, the Rumney Selectmen replied to the Applicant's response indicating that the issue of the maintenance of the turbine roads within the Site during the winter months remained unresolved. Subsequent meetings amongst safety officials have resulted in the drafting of an Environmental Health and Safety Plan (Plan). The

Plan was filed with the Committee on October 11, 2013. Counsel for the Public responded to the Plan with concerns on October 18, 2013.

On January 14, 2013, James Buttolph on behalf of certain intervenors in this docket filed a letter with the Committee asking the Committee to re-open the record. In support of his request Mr. Buttolph alleges that the construction of the project did not comport with the plans as approved by the Committee and that there were significant revisions to the plans specifically regarding the location of the operation and maintenance (O&M) building and the location of two wind turbines. Mr. Buttolph also asserts that the revisions to the planned facility were outside of the purview of the wetlands permit conditions and the alteration of terrain permits conditions.

On January 16, 2013, the Applicant responded to Mr. Buttolph's letter. In response, the Applicant asserts that the revisions to the plans and the facility as constructed were properly submitted to the Department of Environmental Services as modifications or amendments to the wetlands permit and the alteration of terrain permit. The Applicant asserts that further review by the Committee was unnecessary under the terms of the Certificate.

On February 13, 2013, Counsel for the Public responded to Mr. Buttolph's request. Counsel for the Public requests the Committee to issue an order requiring the Applicant to move the O&M building to its originally proposed location or alternatively to suspend the Certificate.

On August 14, 2013, the Committee received a letter from Investigator Ron Anstey of the State Fire Marshal Office. In his letter, Investigator Anstey alleges that statements made in testimony by the Applicant's representatives at the time of the adjudicatory hearing were not true. In addition, Investigator Anstey's letter alleges that the Applicant has failed to comply with applicable fire and building codes and, therefore, has failed to comply with the Decision granting a Certificate of Site and Facility with conditions in the above docketed matter. Investigator Anstey has recommended that all operation on the site cease until all safety concerns, plans, reviews, and required inspections have been completed and approved. Inspector Anstey's request if granted would result in a suspension of the Certificate.

On October 18, 2013, the Fire Marshal filed a letter setting forth the sections of the State Building Code (International Building Code, 2009 Edition), the New Hampshire State Fire Code (NFPA 1, 2009 Edition; NFPA 101, 2009 Edition; NFPA 10, NFPA 12, NFPA 72) and the Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations, NFPA 85, that he claims form the basis for his authority and for the appropriate operation of the Facility in accordance with the Certificate. The Fire Marshal's letter also sets forth additional relevant codes and provisions.

A pre-hearing conference was held on October 2, 2013. At the pre-hearing conference the parties agreed in principle to the terms of a pre-hearing process. A procedural order issued on November 4, 2013. In accordance with the procedural order the parties filed briefs addressing certain legal questions.

A further pre-hearing conference was held on January 30, 2014. A report of pre-hearing conference was submitted by counsel to the Committee. The report contains a proposed schedule agreed upon by the parties attending the pre-hearing conference. The proposed schedule includes a bifurcation of issues in order to address the fire safety issue in a timely manner. The resolution of the fire safety issues is important to the Committee and the Committee will make every effort to address those issues as soon as is practicable while recognizing the due process rights and discovery needs of all parties in this docket.

With regard to the remaining issues the parties have also agreed to a procedural schedule.

The proceedings in this docket shall proceed on the following bifurcated schedule:

I. Issues Raised by the Fire Marshal in Correspondence Dated August 14, 2013

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.

Each party 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.

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 at 9 am at the offices of the New Hampshire Public Utilities commission located at 21 South Fruit Street, Suite 10, Concord, N.H.

II. Procedural Schedule for Remaining Issues

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 preside at the technical session and will try to accommodate all parties in the scheduling thereof.

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 shall respond to the Moving Parties' data requests within 20 days of receipt.

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 shall 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).

A further pre-hearing conference will be scheduled in advance of the adjudicatory hearing.

III. Additional Deadlines

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

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.

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.

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.

The results of Counsel for the Public's field survey shall be provided to all parties on or before June 30, 2014. Unless the Applicant agrees otherwise, attendance at the field survey shall be limited to the Applicant's representatives, Counsel for the Public (if he so chooses), counsel to the Committee (if he so chooses) and the survey team engaged by Counsel for the Public. However, the report of the survey shall be made available to all parties and shall be a public document.

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.

The procedural schedule contained herein is a direct result of the discussion and stipulations of the parties as expressed at the pre-hearing conference on January 30, 2014.

A copy of this Procedural Order and Notice of Possible Suspension of Certificate of Site and facility shall be provided to the Applicant and to all parties in accordance with New Hampshire Code of Administrative Rules, Site 202.07.

So ordered this 20th day of February, 2014 by the Site Evaluation Committee.



Thomas S. Burack
Chairman and Presiding Officer
NH Site Evaluation Committee