

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.

March 13, 2014

ORDER ON REQUESTS TO MODIFY THE PROCEDURAL SCHEDULE

Background

On February 20, 2014, the New Hampshire Site Evaluation Committee (Committee) issued a Procedural Order and Notice of Possible Suspension of Certificate of Site and Facility (Procedural Order) in the above entitled matter. The Procedural Order set forth a series of deadlines and scheduled hearings in this docket. Since the issuance of the Procedural Order, the Committee has received three requests to amend various portions of the Procedural Order.

In pertinent part, the Procedural Order required the Applicant and Counsel for the Public to file an exhibit containing all written correspondence between the Applicant and the Department of Environmental Services (DES) by February 28, 2014. On February 20, 2014, the Applicant, with the assent of Counsel for the Public, filed a letter moving to extend that deadline to March 14, 2014.

The Procedural Order also required the Applicant and the Office of the Fire Marshal (Fire Marshal) to file an exhibit containing all written correspondence between the Applicant and the Fire Marshal by February 28, 2014. On February 27, 2014, the Applicant, with the assent of the Fire Marshal, filed a letter moving to extend that deadline to March 28, 2014.

As part of the procedural schedule, the issues in this docket were bifurcated for hearing. The issues raised by the Fire Marshall in his correspondence of October 18, 2013 were

determined to carry priority due to the public safety issues involved. Therefore, the issues raised in the Fire Marshal's letter were scheduled to be considered on an expedited basis by means of a merits hearing on June 12, 2014. On February 26, 2014 the Fire Marshal filed a Motion to Modify the Procedural Order. The Fire Marshal moves to amend the expedited procedural schedule and to essentially collapse the issues raised by the Fire Marshal into the procedural schedule for the remaining issues that will likely not be scheduled for a merits hearing until January 2015.

This order will address each request to amend the procedural schedule.

Correspondence Between the Applicant and DES.

In its letter dated February 20, 2014, the Applicant reports that due to pre-existing vacation and scheduling commitments, the Applicant will need additional time to coordinate the filing of the exhibit. Counsel for the Public assented to the request. No other party filed an objection. The request to extend the deadline to file the exhibit containing all written correspondence between the Applicant and DES is a reasonable request. Granting the request will not prejudice any party to these proceedings. Therefore, the request contained in the Applicant's letter dated February 20, 2014, to extend the deadline for the filing of an exhibit containing all written correspondence between the Applicant and DES until March 14, 2014 is hereby granted.

Correspondence Between the Applicant and the Fire Marshal.

By letter dated February 27, 2014, the Applicant seeks an extension for the filing of an exhibit containing all correspondence between the Applicant and the Fire Marshal to March 28, 2014. In its letter, the Applicant asserts that the extension of time is necessary because some of the correspondence is confidential commercial information and it will take additional time to

coordinate the filing while maintaining the confidential information. The Fire Marshal assents to the request. Counsel for the Public opposes the requests and asserts that it seeks an unreasonably long extension. Counsel for the Public asserts that most of the relevant correspondence has already been filed along with the Fire Marshal's letter of October 18, 2013, and that the filing of any remaining correspondence and documents should be reasonably accomplished by March 14, 2014.

While no party has made a specific representation, it plainly appears that there has been correspondence between the Applicant and the Fire Marshal that has not, to this point, been filed with the Committee or disclosed to other parties. Because the Applicant and the Fire Marshal are negotiating the matter of the installation of fire suppression systems within the turbine nacelles, it follows that the technical specifications for such systems may be considered to be proprietary and/or confidential commercial material by the manufacturer. Understanding that the compilation of the exhibit may be complicated by such issues, the request filed by the Applicant to extend the deadline is reasonable. An extension will not prejudice any other party. March 28, 2014, is a reasonable deadline. The motion to extend the time to file an exhibit containing all correspondence between the Applicant and the Fire Marshal is granted to March 28, 2014.

Fire Marshal's Motion to Modify Procedural Schedule.

The Fire Marshal has filed a Motion to Modify the Procedural Order. The Fire Marshal requests that the issues raised in his letter on October 18, 2013, now be combined with all other issues in this docket which are planned to follow a schedule that culminates with a merits hearing next winter. The Fire Marshal's motion asserts that since the Committee could not schedule an expedited hearing before the beginning of "fire season", he does not wish to forgo the more robust discovery process that accompanies the remaining issues in this docket. The Applicant,

Counsel for the Public, and the Buttolph/Lewis/Spring intervenor group assented to the motion. No objections to the motion were filed.

The position of the Fire Marshal is surprising. At the pre-hearing conference on January 30, 2014, the bifurcation of issues as well as the resulting time frames for discovery and hearing were discussed and agreed to by all participating parties. The scheduling of the merits hearing in early June was anticipated by the discussion. It is true that the scheduled hearing falls after the beginning of “fire season.” That is the result of accommodating the due process needs of all parties. However, several months of “fire season” remain after June 12, 2014. The underlying purpose of expediting the Fire Marshal’s issues for hearing was to assure public safety. Any inconvenience to the Fire Marshal or other parties as a result of the expedited schedule does not warrant a delay of the expedited hearing. While it is true that many forest fires occur in the spring, the fire season extends well into the early autumn season. In the interest of public safety, the Motion to Modify the Procedural Order is denied and the parties will be prepared for a merits hearing on the issues raised in the Fire Marshal’s letter of October 18, 2013, on June 12, 2014.

Unfortunately, the Fire Marshal filed his motion to modify on February 26, 2014, just five days before he was required to submit pre-filed testimony under the procedural order. The final date for objections to the Fire Marshal’s motion was March 10, 2014. In the interim, the Fire Marshal did not submit his pre-filed testimony. Therefore, it is necessary to adjust the discovery schedule for the bifurcated hearing on the issue raised by the Fire Marshal’s letter of October 18, 2014. The hearing itself will not be continued.

The procedural schedule for the issues to be heard by the Committee on June 12, 2014, is hereby amended as follows:

The Fire Marshal shall submit prefiled direct testimony by March 21, 2014.

A Technical Session addressing the Fire Marshal testimony shall be scheduled for April 1, 2014 (Fire Marshal Technical Session.) The place and time of the Fire Marshal Technical Session shall be determined by counsel to the Committee. Counsel to the Committee shall moderate and preside at Fire Marshal Technical Session.

The Applicant and other parties (including Counsel for the Public and all intervenors) shall submit prefiled testimony by May 5, 2014.

A Technical Session addressing the prefiled testimony of the Applicant and other parties (Applicant Technical Session) will be scheduled for May 15, 2014. The place and time of the Applicant Technical Session shall be determined by counsel to the Committee. Counsel to the Committee shall moderate and preside at Applicant Technical Session.

Supplemental Prefiled testimony from all parties will be submitted no later than May 30, 2014.

Each party shall file an Exhibit List detailing all exhibits to be relied on during the adjudicatory hearing not later than June 4, 2014.

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.

Further efforts to modify this portion of the procedural schedule are discouraged.

Order

For the reasons set forth herein it is hereby:

Ordered that the Applicant's request to extend the time to file an exhibit containing all written correspondence between the Applicant and the Department of Environmental Services until March 14, 2014 is hereby granted;

Further Ordered that the Applicant's request to extend the time to file an exhibit containing all written correspondence between the Applicant and the Office of the Fire Marshal to March 28, 2014 is hereby granted;

Further Ordered that the Fire Marshal's Motion to Modify the Procedural Schedule is hereby denied;

Further Ordered that the procedural schedule in this docket is amended as set forth in this order; and,

Further Ordered that Groton Wind, LLC is hereby notified that the Site Evaluation Committee has received correspondence alleging that Groton Wind LLC is 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 Groton Wind, LLC is 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.

So Ordered this 13th day of March, 2014



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