

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

**APPLICATION OF GROTON WIND, LLC
NO. 2010-01**

**OBJECTION OF THE INTERVENOR GROUP BUTTOLPH/LEWIS/SPRING TO
GROTON WIND, LLC'S CONTESTED MOTION FOR REHEARING/RECONSIDERATION
AND GROTON WIND, LLC'S CONTESTED MOTION TO MODIFY PROCEDURAL ORDER**

The Buttolph/Lewis/Spring intervenor group ('Intervenors'), through its representative, Lisa Linowes, respectfully objects to the March 14, 2014 motions filed by Groton Wind LLC ("Applicant") which seek reconsideration of and modification to portions of the Site Evaluation Committee's ("Committee") February 20, 2014 Procedural Order ("Procedural Order"). In its motions, the Applicant asks the Committee to:

- (a) reconsider the requirement that all correspondence between the Applicant and the Fire Marshal be filed as part of the docket, and
- (b) permit the Applicant to withhold information regarding building codes, life safety codes, and fire codes that it asserts are applicable to the Project until it prefiles testimony in the proceeding.

In support of this objection, the Intervenors state the following:

I. BACKGROUND

1. The Committee required the Applicant and Investigator Anstey file "copies of all correspondence of any nature between the Applicant, Applicant's representative or agents pertaining to the fire code, life safety code, building code and whether "on-board" fire suppression equipment is required." The Committee also required that copies of the correspondence be provided to all parties within 10 days of the October 2, 2013

prehearing conference. (*See September 24, 2013 Agenda For Prehearing Conference On October 2, 2013 at 3*)

2. The Procedural Order reiterated the Committee's requirement that the Applicant and the Fire Marshal jointly file an exhibit containing all correspondence between the Office of the Fire Marshal and the Applicant by February 28, 2014.

3. The Procedural Order also required the Applicant to 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. (*See February 20, 2014 Procedural Order at 5*)

4. The Committee's order did not constrain the exhibit to exclude correspondence after October 2013 nor did the Committee characterize the nature of the correspondence. The Presiding Officer made clear the Committee was seeking "the sum total of the written correspondence" between the Applicant and the Fire Marshal and asked of the Fire Marshal "If you find that's there [sic] additional correspondence, file it, and circulate it to the entire service list." (*See Tr. Jan 30, 2014 at 55*)

5. The Intervenors, to the best of their knowledge, have not received any copies of correspondence as filed by the Applicant. The same may be true for other parties to the proceeding. (*See February 18, 2014 Office of the Fire Marshal's Confirmation of Correspondence at para 3*)

6. The Applicant, at no time, sought a protective order for any of the documents requested. The question of confidentiality was not raised by any of the parties until the Applicant submitted its February 27, 2014 letter seeking an extension of time to jointly file an exhibit with the Fire Marshal. The Office of the Fire Marshal has not asserted a confidentiality claim in this matter.

II. DISCUSSION

7. Confidentiality between the Applicant and a public official, as is the situation in this case, is not supported by the law. The Courts construe RSA 91-A's "provisions favoring disclosure broadly, while construing exemptions narrowly." (*Montenegro v. Dover*, 162 N.H. 641, 649 (2011)). The purpose of RSA 91-A is to "ensure both the greatest possible public access to the actions, discussions and records of all public bodies [and officials], and their accountability to the people." RSA 91-A:1.

8. Further, when an elected or public official is involved, the duty to disclose is even greater. "[P]ublic knowledge of the considerations upon which governmental action is based and of the decisions taken is essential to the democratic process. [...] Such public scrutiny is of even greater import when the public body at issue consists of persons who by their very nature represent the will of the people, and, in their actions, are substituting their judgment for that of the people." (*Lambert v. Belknap County*, 157 N.H. 375, 381-382 (2008)). The Lambert case held that even where some privacy right exists, it can be outweighed by the public's right-to-know, citing the 'greatest possible public access' language in RSA 91-A:1.

9. Also whenever a public official is involved, the public's right to know is constitutionally based, as Part I, Article 8, Accountability of Magistrates and Officers; Public's Right to Know, provides that: "All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted." This means that even if the information could be non-public for an employee, it frequently cannot be non-public if it involves a public official.

10. The Applicant insists that since October, it has been working with the State Fire Marshal's Office to reach a possible settlement regarding that Office's concerns about the Groton Wind Project. The Fire Marshal is not a private party that is seeking common ground with the Applicant but one who holds responsibility for ensuring the public is not harmed by the Applicant's project. Any negotiations, presumably with regard to enforcement of certain safety codes and not of others is of the utmost importance to the public and the public has the right-to-know what potential concessions to safety may be in the works. The public's right-to-know far outweighs any risk of disclosure.

11. The Applicant argues that the State Fire Marshal lacks the authority to enforce state building codes with respect to the Groton Wind project (*December 4, 2013 Opening Brief of Groton Wind at 14*), yet finds it convenient to cite *38 Endicott Street North, LLC v. State Fire Marshal, 163 NH 656 (2012)*. Assuming the Fire Marshal has enforcement authority, the Fire Marshal has not asserted that any correspondence remain confidential. The Applicant has failed to demonstrate how disclosure of Groton Wind's thoughts regarding settlement would deprive Groton Wind of a right to a fair or impartial adjudication.

12. Finally, the Applicant's request to withhold information regarding building codes, life safety codes, and fire codes that it asserts are applicable to the Project until it files testimony in the proceeding is subject to the same argument. Once this information was shared with the Office of the Fire Marshal, the information became public and must be shared with the public.

WHEREFORE, the Intervenors respectfully request that the Committee:

A. Require the Applicant to submit the sum total of all written correspondence between the Applicant and the Fire Marshal including correspondence relating to settlement discussions concerning the Fire Marshal's claims in this docket;

B. Require the Applicant to submit building codes, life safety codes, and fire codes that it asserts are applicable to the Project in a timeframe that is consistent with the Procedural Order; and

C. Grant such other and further relief as deemed appropriate.

Dated this day of March 24, 2014

By:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

On behalf of the Intervenors: Buttolph/Lewis/Spring and Watson

cc: Parties to Docket 2010-01