

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

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

**DIRECT PRE-FILED TESTIMONY OF THE  
BUTTOLPH/LEWIS/SPRING INTERVENOR GROUP  
JULY 30, 2014**

**1) Please state your names and addresses for the record.**

The individuals comprising the Buttolph/Lewis/Spring Intervenor Group ("Intervenors") are as follows:

James Buttolph, 170 Quincy Road, Rumney, NH

Cheryl Lewis, 56 Campground Road in Rumney, NH.

Carl S. Spring, Groton Hollow Road, Rumney, NH

Each of the Intervenors participated in the proceeding before the NH Site Evaluation Committee ("Committee") which led to the Groton Wind Energy facility (the "Project") being certificated. Each is very familiar with the conditions of approval set forth by the Committee in the project's certificate of site and facility.

**2) What is the purpose of your testimony?**

The Intervenors submitted a letter to the Committee (*Buttolph/Lewis/Spring Letter, January 14, 2013*) requesting that the record in the above referenced docket be reopened to consider revisions of the Groton Wind project plans that were not approved by the Committee. Since that time, new information was submitted into the record by the Intervenors and others, including the Office of the State Fire Marshal, further documenting differences between the approved and "as-built" plans. A number of parties that were negatively impacted by the revisions have reached settlements with Groton Wind. The purpose of our testimony is to provide a full description of how Groton Wind deviated from the plans approved by the Committee, to highlight our reasons why the settlement agreements between Groton Wind and Counsel for the Public and others are inadequate in addressing the harm done, and to explain the status of our settlement efforts with Groton Wind.

**3) Please provide an explanation of how the Groton Wind project, as built, is not in compliance with the certificate issued by the Committee.**

This question has already been answered in the many documents filed by the parties to this proceeding. Without duplicating the record we provide below a list of the changes.

a) The project's operation and maintenance building was constructed on the west side of Clark Brook, approximately 500-feet from the approved location and close to the residential properties of Mario Rampino, Greg Saulnier and Marianne Peabody. The building was sited on an elevated terrace that was previously thickly forested and now devoid of vegetation other than sparse plantings added since construction was completed. All related infrastructure for the O&M building, including a substantial filtration basin, was moved closer to Mr. Rampino's property and closer to Clark Brook.

b) Eight of the turbines were relocated between 6-feet and 123-feet from their approved locations. (*Contested motion of Groton Wind, Attachment 3 12/04/13*)

c) The revised plans dated October 28, 2011 show road profiles with steeper grades (>12%) than those defined in the plans certificated by the Committee. Groton Wind LLC now asserts winter access of the project site is not recommended due to "continuous roadway grades that exceed 12-percent and have up to 15-percent grades." (*Appendix A: VHB Letter 3/22/2013*).

**4) Groton Wind characterizes the Project's revisions as not 'significant' or as 'minor', thus removing the need for further Committee review. Do you agree?**

No. To begin, there is no apparent exception in chapter 162-H for insignificant or minor revisions that would permit applicants to override the terms of their Certificates. Counsel for the Public states in his February 13, 2013 response, that:

...the law requires that construction "shall be" "in accordance with" the terms of the Certificate. RSA 162-H:5; see also *Hudson v. Baker*, 133 N.H. 750, 752 (1990) ("The

word 'shall' is 'a command, which requires mandatory enforcement. '); 162-H:7, IX (applicant shall immediately inform the committee of any substantive changes to its application). While "in accordance with" may not require strict conformity, the conformity should be at least substantial. See *State ex rei. Pinzone v. City a/Cleveland*, 295 N.E.2d 408,411 (Ohio 1973) (in accordance with means more than general conformity, it means substantial conformity); *Black's Law Dictionary* (5 th ed.1979) at 16 ("Accordance" means "agreement; harmony; concord; conformity.") Even on a liberal interpretation of the expression, however, it cannot be said that a complete relocation of a major structure can be in substantial conformity with the Certificated plans.

Groton Wind's use of the word 'minor' is a gross misuse of the technical terminology used by the NHDES when evaluating projects. Revisions to the project plans were deemed 'minor' by the NHDES Wetlands Bureau primarily because the changes met the measurable criteria as defined under NH Administrative Rule Env-Wt 303.03 for Minor Projects i.e. the changes resulted in less than 20,000 square feet of impact to jurisdictional wetlands.

The statutes and administrative rules relied on by DES in making its findings do not impose the same statutory requirements as defined under RSA 162-H:16 IV. To argue now that NHDES has the power to approve project revisions on the order made in this docket and thereby relieve Groton Wind of having to meet the more comprehensive requirements under RSA 162-H makes no sense.

But further to the point, DES' own administrative rules for alteration of terrain permits (AoT) indicate that the project revisions were not minor. NH Administrative Rule Env-Wq 1503.22(a), states that if revisions to a permitted project exceed any of the criteria specified in Env-Wq 1503.21(d)(1)-(8), and exceed DES criteria cited under Env-Wq 1503.22(c), the permit holder *must secure a new AoT permit.*

The Groton Wind revisions, which involved moving the O&M building and at least one turbine more than 100-feet from where they were originally approved, required that Groton Wind file for a new AoT permit. According to Env-Wq 1503.22(g), there is no apparent discretion granted NHDES to bend this rule, yet Groton Wind was permitted to amend its AoT permit. Had the

rules been followed, the Committee, and the public, would have been notified of the changes. Instead, there was no opportunity for the public to have a voice in the process.

**5) Do you have any comments regarding the settlement agreements between Groton Wind and Mario Rampino, Greg Saulnier and Marianne Peabody?**

No. These settlements are confidential and were reached between private parties.

**6) Do you have any concerns regarding the settlement agreement reached between Groton Wind and the Office of the Fire Marshal?**

No. We appreciate the difficult job undertaken by the Office of the Fire Marshal in enforcing 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 other relevant codes and provisions in order to ensure fire safety. We also understand the burden placed on Groton Wind to retrofit the turbines and the O&M building with equipment necessary to meet the Fire Marshal's requirements.

However, we note that State Fire Marshal's determination of compliance focuses on fire safety and does not extend to other public safety and rescue matters. The State Fire Marshal will offer guidance only to local fire departments regarding safety and rescue issues (*Transcript 06/12/14 pages 26-27, ln 21-24, 1-2*).

**7) Groton Wind has submitted an Emergency Plan for the Project which has been accepted by the Office of the Fire Marshal. Do you have any concerns with the Emergency Plan?**

Yes. We have two primary concerns with the Emergency Plan as follows:

a) Section 8.3 of the Emergency Plan discusses Fire or Explosion at the Substation and/or Transformer. The substation is located approximately 13 miles from the project site in the Town of Holderness, NH. It is setback from Route 175 and across the street from a mobile home park. To our knowledge the substation is not manned by Groton Wind personnel on a regular basis.

This differs from the Project site where personnel are present at least during the daytime hours.

The Plan should be expanded to explain how emergency authorities will be notified should a fire or explosion occur at the substation. In addition, since the substation is located in Holderness, NH, the Holderness fire department should be invited to attend all training sessions related to the substation.

b) The Committee's May 6, 2011 decision, includes the following paragraph regarding Ice Shed:

"The Applicant asserts that ice throws are unlikely to occur because ice generally melts gradually, allowing the turbine to spin slowly and causing the ice to slip off the blades and to fall on the ground. Tr. 11/02/2010, Morning Session, at 97-98. The Subcommittee received no credible evidence demonstrating that ice throws will cause an unreasonable adverse effect on public safety. The Subcommittee finds that the Project does not pose a danger to the human health and safety due to ice throws and finds it unnecessary to impose any conditions in this regard."

This casual treatment of the issue is in direct contrast to Section 9.3 of the Emergency Plan which states:

"Shedding ice may be thrown a significant distance as a result of the rotor spinning or wind blowing the ice fragments. Icing of blades is a significant issue that during "shedding" poses a risk of injury or property damage. Everyone is reminded that at any time when "icing" may potentially occur there is no replacement for using constant vigilance in assessing your surroundings."

Groton Wind defines a safety setback perimeter of 524-feet as referenced in 9.3.2 of the Emergency Plan to protect employees from ice but there is no apparent concern for the public that might wander near the operating machines. Intervenor Mark Watson included a photo with his November 18, 2013 response to the Emergency Plan (Appendix B) which showed footprints leading right up to a turbine. There is no way to ascertain whether these footprints were the result of Groton Wind personnel in the area or members of the public, but given the lack of warning signs, we have to assume the public will enter the area.

**8) You objected to the settlement agreement filed jointly by Groton Wind and Counsel for the Public. Do you wish to comment further on your objection?**

Yes. We are particularly struck by the arguments set forth in Counsel for the Public's February 13, 2013 response where he states that the O&M building should be relocated back to its original approved location. "These remedies," he wrote "are typical of this type of violation." He goes on to cite five separate NH court cases where defendants were required to vacate/demolish structures that were constructed outside the terms of their permits.

The settlement document offers no information on how Groton Wind and Counsel for the Public arrived at the \$150,000 payment to address the enforcement claims filed by Attorney Roth, nor does it explain how the amount compares to the cost of removing or relocating the O&M building. The settlement agreement ignores the relocation of the turbines and is largely silent on the fact that Groton Wind constructed the roads in such a way that prohibits year-round access other than via snow cats driven by Groton Wind personnel -- a deviation from the approved certificate.

If token penalties are asked of multi-billion dollar international corporations for ignoring New Hampshire's laws and rules, then our ability to oversee and enforce these same laws moving forward will be greatly diminished as will the public's trust in our agencies.

When we were made aware of the \$150,000 to be used to improve the Livermore Falls area, we were compelled to object. Two unsightly metal power poles, each standing well over 50 feet now straddle the remains of the historic 'Pumpkin Seed Bridge' and sit on State-owned land. At no time during the proceedings for the Project did Groton Wind reveal to the Committee, the public, or to DRED's Division of Forests & Lands the location and appearance of the 34.5 kV interconnection line through this area.

Groton Wind has long contended that the 34.5 kV power line did not require a certificate of site and facility (*Cherian Third Supplemental Prefiled testimony, December 30, 2010, footnote 2*)

and that the poles would be installed along existing routes and rights-of-way. We disagree. Nonetheless, if Groton Wind is correct, this does not mean the Committee could not take action to mitigate for their appearance, or at least call for more public input from the impacted towns of Plymouth, Campton and Holderness. Instead, many people were taken by surprise including DRED employees.

**9) Can you comment our your efforts to settle with Groton Wind?**

Yes. The Intervenors have been in discussions with Groton Wind and we believe we have reached an agreement in principle. However, after earnestly participating in settlement discussions for more than four months, we are disappointed and surprised a full agreement has not been finalized by now.

**10) Do you have any final comments?**

Yes. The Intervenors do not support Groton Wind's motion to amend the permit. We believe a full adjudicative hearing on the changes to the permit are warranted despite settlements having been reached with various parties. (This is consistent with our December 16, 2013 objection to Groton Wind's motion to amend.) The Intervenors expect to participate in such a proceeding unless a settlement agreement is reached between the Intervenors and Groton Wind and the terms of the settlement disallow our participation.

**11) Does this complete your prefiled testimony?**

Yes.