

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

PLEASE TAKE NOTICE that the Site Evaluation Committee for the State of New Hampshire will conduct a public meeting on April 20, 2015 at 10 AM. The meeting shall be held at the offices of the Public Utilities Commission located at 21 South Fruit Street, Suite 10, Concord, N.H. 03301, New Hampshire.

The business of the Site Evaluation Committee (Committee) at said meeting shall include the following dockets and any other business that is lawfully before the 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 30, 2015

**PROCEDURAL ORDER AND NOTICE
OF FINAL PUBLIC HEARING ON THE MERITS**

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.

I. Background

On May 6, 2011, a Subcommittee of the Site Evaluation Committee (Subcommittee) issued a Decision Granting a Certificate of Site and Facility with Conditions (Certificate) to Groton Wind, LLC (Applicant), authorizing the construction and operation of a renewable energy facility consisting of 24 Gamesa G82 turbines each having a nameplate capacity of 2 megawatts (MW), for a total nameplate capacity of 48 MW (Facility). The Facility is located on a site 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.

Since the commencement of commercial operations the Committee has received several complaints regarding the operation of the Facility. The complaints generally involve allegations that the Applicant has failed to conform to the conditions of the Certificate and that misrepresentations were made by the Applicant's representatives to the Subcommittee. In addition the Applicant filed a motion to amend the terms and conditions of the Certificate.

A brief overview of the issues and procedural background follows.

A. Winter Maintenance Issues

On December 31, 2012, the Committee received two letters from the Selectmen of the Town of Rumney (Rumney) expressing concerns about the safety and maintenance of the turbine roads within the Site during the winter months. On January 11 and January 14, 2013, the Applicant delivered two letters to the Committee responding to the concerns raised by Rumney. On January 16, 2013, Rumney 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 resulted in the drafting of an Environmental Health and Safety Plan (Safety Plan). The Safety Plan was filed with the Committee on October 11, 2013. Counsel for the Public responded to the Safety Plan with concerns on October 18, 2013. Rumney objected to the Safety Plan on November 14, 2013. The Department of Safety, Office of

the Fire Marshal (Fire Marshal) filed its response to the Safety Plan on November 18, 2013.

Intervenor, Mark Watson, filed his objection to the Safety Plan on November 18, 2013.

On April 14, 2014, the Applicant filed a Contested Motion for Approval of Amendment to the Town of Groton Agreement. The motion referenced an agreement between the Applicant and the Town of Groton (Groton) that had been previously approved and incorporated into the conditions of the Certificate. The Applicant advised the Committee that the Applicant and Groton executed an amendment to the agreement. The amendment pertains to the issue of winter road maintenance and access to the Site by emergency responders. The Applicant requested the Committee to amend the Certificate to incorporate and reflect the amended agreement. Counsel for the Public objected to the Applicant's request on April 21, 2014. The Buttolph Lewis intervenors objected to the Applicant's request on April 24, 2014.

On June 12, 2014, the Applicant filed an e-mail received from counsel for Rumney advising the Committee that Rumney does not have any outstanding issues with the Applicant. Rumney's correspondence appears to apply to the original concerns about winter maintenance and Site access as originally expressed by Rumney in its correspondence from December 2013 and January 2014.

The Applicant's Motion to Approve the Agreement with the Town of Groton remains pending.

B. Motion to Re-Open/Conformance with Certificate

On January 14, 2013, James Buttolph on behalf of the Buttolph Lewis intervenors 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 Facility within the Site did not comport with the

plans as approved by the Committee and that there were significant revisions to the Site 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 Site and Facility were outside of the purview of the Wetlands Permit conditions and the Alteration of Terrain Permit conditions.

On January 16, 2013, the Applicant responded to Mr. Buttolph's letter. In response, the Applicant asserted 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 January 30, 2013, Ms. Marianne Peabody requested the Committee to allow her to intervene in this docket. Ms. Peabody alleged the value of her property was affected by the Applicant's failure to construct the O&M building in compliance with the Certificate. On January 31, 2013, Rumney also raised its concerns with relocation of the O&M building.

On February 13, 2013, Counsel for the Public responded to Mr. Buttolph's request. Counsel for the Public requested 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 October 3, 2013, Mr. Mario Rampino requested the Committee to grant him intervenor status. In his request, Mr. Rampino alleged that the Applicant caused him immediate and irreparable harm by constructing the O&M building in a location not contemplated by the

Certificate. Mr. Rampino's motion to intervene was granted on November 4, 2013. On February 12, 2014, Mr. Rampino withdrew his claims against the Applicant and relinquished his status.

On March 24, 2014, Marianne Peabody withdrew her claims against the Applicant and relinquished her status as an Intervenor.

On July 16, 2014, Counsel for a Public advised the Committee that he reached a settlement agreement (Settlement Agreement) with the Applicant and filed a withdrawal of the enforcement claims pending in this docket. On July 16, 2014, the Applicant also filed a Motion to Approve Settlement Agreement between the Applicant and Counsel for the Public.

The Buttolph Lewis intervenors objected to the Applicant's request on July 28, 2014.

On August 20, 2014, Mr. James M. Buttolph, Ms. Cheryl Lewis, and Mr. Carl Spring withdrew their claims against the Applicant and relinquished their status as intervenors in this docket.

The Settlement Agreement filed by Counsel for the Public requires consideration and remains pending.

C. Fire Marshal Enforcement Issues

On August 12, 2013, the Committee received a letter from Investigator Ron Anstey on behalf of the Fire Marshal. In his letter, Investigator Anstey alleged 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 alleged that the Applicant has failed to comply with applicable fire and building codes and, therefore, has failed to comply with the conditions of the Certificate in this matter. Investigator Anstey 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 September 30, 2013, Mr. Mark Watson requested the Committee to grant him intervenor status. In his motion Mr. Watson asserted that he was concerned about the Fire Marshal's allegation that the Applicant had not installed a fixed fire suppression system and that he resided in proximity to the Site. He was concerned that his home would be threatened in the event of a fire on the Site. Mr. Watson's motion was granted on November 4, 2013. He was allowed to appear *pro se*.

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. The Applicant responded on November 18, 2013.

On April 16, 2014, the Fire Marshal advised the Committee that it entered into a Compliance Agreement with the Applicant designed to resolve any and all issues raised by the Fire Marshall. On April 21, 2014, the Fire Marshal filed a Partially Assented-To Motion to Stay requesting the Committee to stay all proceedings as they related to the issues raised by the Fire Marshal.

On May 8, 2014, the Committee issued an Order on Pending Motions Pertaining to Issues

Raised by the Fire Marshal. The Committee granted the Fire Marshal's Motion to Stay and stayed the proceedings, as they related to the issues raised by the Fire Marshal, pending the Applicant's compliance with the Agreement. The Committee further requested the Fire Marshal to notify the Committee of the Applicant's compliance with the Compliance Agreement within 30 days of the date of the Order. A Status Conference was scheduled for June 12, 2014.

On June 9, 2014, pursuant to the Committee's request, the Fire Marshal filed a Report on the Status of the Applicant's Compliance with the Compliance Agreement advising the Committee that the Applicant was compliant or in the process of becoming compliant with the Compliance Agreement. On October 6, 2014, the Office of Fire Marshal filed a Final Report on the status of Applicant's compliance with the Compliance Agreement. The Final Report finds the Applicant to be in full compliance.

Consideration of the Fire Marshal's Compliance Agreement remains pending in this docket.

D. Applicant's Motion to Amend the Certificate

On December 4, 2013, the Applicant filed a Contested Motion to Amend Certificate of Site and Facility. The motion asks the Committee to amend the certificate to reflect the as-built specifications of the O&M Building and to approve its new location. The motion also asks the Committee to approve the as-built locations of Turbines E-2 and E-3 as well as the reconfigured road accessing the turbines. The motion also seeks approval of other minor changes to the Certificate.

Counsel for the Public, Mr. Watson and the Buttolph Lewis intervenors objected on December 16, 2013. The Fire Marshal also filed a response on December 16, 2013.

On February 12, 2014, Mr. Rampino withdrew his claims against the Applicant and relinquished his status. In withdrawing his claims Mr. Rampino also withdrew any objection to the Applicant's motion to amend the Certificate

On March 24, 2014, Marianne Peabody withdrew her claims against the Applicant and relinquished her status as an Intervenor. In withdrawing her claims Ms. Peabody also withdrew any objection to the Applicant's motion to amend the Certificate

On July 16, 2014, Counsel for a Public advised the Committee that he reached a Settlement Agreement with the Applicant and filed a Withdrawal of Enforcement Claims pending in this docket. Consequently, on July 16, 2014, the Applicant filed a Motion to Approve Settlement Agreement between the Applicant and Counsel for the Public. The Settlement Agreement and withdrawal of enforcement claims appears to resolve the dispute between Counsel for the Public and the Applicant including issues related to the Fire Marshal's Compliance Agreement and the Applicant's motion to amend the Certificate.

Consideration of the Settlement Agreement remains pending before the Committee as does consideration of the motion to amend the Certificate.

II. Procedural Status

On July 7, 2104, the Chairman of the Committee issued a procedural order. The order required Counsel for the Public and any party seeking suspension or revocation of the Certificate in this docket to file direct testimony before July 30, 2014.

On July 16, 2014 Counsel for the Public withdrew his enforcement claims and filed a Settlement Agreement with the Committee. Counsel for the Public moved that the Committee

approve the Settlement Agreement. The Buttolph Lewis intervenors objected to the proposed Settlement Agreement on July 28, 2014.

On July 30, 2014, the Buttolph Spring Lewis intervenors filed direct testimony. However, on August 20, 2014 Mr. Buttolph, Ms. Lewis and Mr. Spring all withdrew as intervenors and provided correspondence to the Committee indicating that they intended to withdraw “any and all challenges, claims, letters, pleadings, protests, oppositions, objections, filings and oral and written statements made by me or on my behalf. . .”

Mark Watson did not file direct testimony. However, after the withdrawal of the Buttolph Lewis intervenors he forwarded a letter to the Committee asserting that he did not withdraw and that certain pleadings were submitted by him and presumably remain pending¹. Mr. Watson remains as the sole intervenor in this docket.

III. Notice of Hearing

On April 20, 2015, the Committee will hold a public hearing to resolve all outstanding motions and issues in this docket. The issues to be resolved are:

1. The Applicant’s motion to amend the Certificate; and
2. The Applicant’s motion to approve the agreement with the Town of Groton; and,
3. The Applicant’s Environmental Health and Safety Plan; and,
4. Counsel for the Public’s motion to approve the Settlement Agreement; and
5. The Fire Marshal’s Compliance Agreement;

¹ The pleadings identified in Mr. Watson’s correspondence were filed by Lisa Linowes. Her appearance was filed for the Buttolph Lewis intervenor group on January 4, 2014. She did not appear for Mark Watson. The pleadings were signed by Ms. Linowes whose representation extended only to Mssrs. Buttolph and Spring and Ms. Lewis.

Because there is no pending pre-filed testimony the Committee will not take evidence at this hearing but will hear oral argument from the remaining parties to this matter: the Applicant, Counsel for the Public and Mark Watson. Upon the conclusion of oral arguments the Committee may deliberate with regard to final resolution of all issues in this docket.

The Public Hearing will be held on April 20, 2015 at the offices of the Public Utilities Commission located at 21 South Fruit Street, Suite 10, Concord, N.H. 03301. The hearing will commence at 10 AM.

The authority for this hearing is RSA 162-H: 4, II.

So Ordered this 30th day of March, 2015.


Thomas S. Burack, Presiding Officer
Site Evaluation Committee