

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE  
APPLICATION OF GROTON WIND, LLC  
Docket NO. 2010-01**

**MEMORANDA ADDRESSING OUTSTANDING ISSUES**

Intervenor, Mark Watson, respectfully offers this Memorandum in advance of the April 20, 2015 hearing on the Groton Wind enforcement proceeding. Outstanding issues referenced herein pertain to the following:

1. The Applicant's motion to amend the Certificate;
2. The Applicant's Environmental Health and Safety Plan; and,
3. Counsel for the Public's motion to approve the Settlement Agreement.

Before addressing these issues, I wish to correct an error in footnote 1 of the Committee's March 30, 2015 Procedural Order. The footnote states that the September 8, 2014 letter I submitted to the Committee lists pleadings that were all prepared and signed by Lisa Linowes. This is not correct. The first two documents cited in my letter<sup>1</sup> were signed jointly by me and a representative of the Buttolph/Lewis/Spring Intervenor Group. Ms. Linowes' name does not appear in the documents. I regret the confusion regarding the latter two documents. I collaborated with the Buttolph/Lewis/Spring Intervenor group in preparing these document but recognize that Ms. Linowes did not represent me before the Committee. I ask that the Committee note the distinction in these documents and permit some, and possibly all to remain in the record. I also ask that you recognize the separate documents I submitted to the Committee that were not

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<sup>1</sup> [Objection of Mark Watson](#) and the Intervenor Group Buttolph Lewis Spring to Groton Wind LLC Contested Motion to Amend Certificate of Site and Facility - December 16, 2013

[Reply Memorandum of Mark Watson](#) and the Intervenor Group Buttolph Lewis Spring - January 6, 2014

jointly prepared. (*Response Of Mark Watson To Filing Of Groton Wind LLC's Environmental Health And Safety Plan November 18, 2013*)

**I. APPLICANT'S MOTION TO AMEND**

Groton Wind continues to insist that the Committee has the legal authority to delegate powers to the New Hampshire Department of Environmental Services (NHDES) which, by statute, reside solely with the Committee. My January 6, 2014 reply memo jointly signed and submitted to the Committee by myself and the Buttolph/Lewis/Spring Intervenor Group outlines my objections. While Groton Wind maintains that the *Project Specific Conditions* listed in the Wetlands and Alteration of Terrain ("AoT") permits mandate that plan revisions be submitted to NHDES for approval (*Wetlands Permit Project Specific Condition #2 and AoT Permit Project Specific Condition #1*), this in no way negates the need to involve the Committee. Condition #6 of the AoT permit makes clear that an Applicant who is granted a permit is not relieved of its obligation to obtain other local, state or federal permits that may be required. Further, RSA 162-H:4 III and RSA 162-H:4 III-a strictly limit the ability of the Committee to delegate its powers. Under RSA 162-H:4 III-a, any delegation of powers by the Committee is constrained to activities that were approved by the Committee and/or authorized by the Certificate.

Groton Wind's characterization of the project's revisions as 'minor' and, thus, of insufficient import to trigger the Committee's review demonstrates a gross misuse of terminology used by NHDES when evaluating impacts to jurisdictional wetlands. (*See NH Administrative Rule Env-Wt 303.03 for Minor Projects*) 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 insist that NHDES has the power to approve project revisions on the order made in this docket, thus relieving Groton Wind of having to meet the more comprehensive requirements under RSA 162-H makes no sense.

Since Groton Wind's revisions also involved moving the O&M building and associated parking at least 500-feet from where they were originally approved, DES should have required a new AoT permit<sup>2</sup>. Pursuant to Env-Wq 1503.22(g), there is no apparent discretion granting NHDES the flexibility to bend this rule.

In Paragraph 5 of the settlement agreement between Groton Wind and Counsel for the Public, Groton Wind acknowledges "that certain communications and decisions surrounding its construction of the operations and maintenance building of the Groton Wind Project did not meet the expectations of state officials ...and was not explicitly authorized by the certificate." This statement appears to admit wrongdoing on the part of Groton Wind. If not, then we should at least understand what decisions pertaining to construction of the O&M building were not authorized by the certificate. I would also ask that a DES representative be made available to respond to the agency's understanding of what he/she was approving.

## **II. APPLICANT'S ENVIRONMENTAL HEALTH AND SAFETY PLAN**

Paragraph 3.6.4 of the Environmental Health And Safety Plan states that Iberdrola will transport emergency services personnel in all-terrain vehicles when the roads are impassible. This provision is necessary due to Groton Wind LLC's deliberate disregard of the conditions under which the project was approved.

The Alteration of Terrain permit originally approved by NH DES and subsumed in the Certificate of Site And Facility references project plans that show all roads with a grade no steeper than 12%. The as-built roads include sections with grades at 15%. There is no evidence in the record that Groton Wind LLC notified the Committee, Counsel to the Public, the parties to the proceeding, or the Towns of Groton and

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<sup>2</sup> Pursuant to NH Administrative Rule Env-Wq 1503.22(a), revisions to a permitted project that 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), require that the permit holder secure a new AoT permit.

Rumney of the changes to the road profiles prior to construction. The VHB letter to NH DES that explains the plan revisions, including relocation of the O&M building and two turbines, omitted any reference to the road profile changes. (*Buttolph/Lewis/Spring Motion to reopen, Attachment 3, 1/14/13*) This change has proven significant in that it resulted in an inability of Groton Wind to adhere to Section 8.2 of the Groton Town agreement<sup>3</sup>.

As I state in my petition for intervention, I am very concerned in the event of a fire at the facility during periods in which the roads remain unplowed and inaccessible to firefighting equipment. Despite the turbines being equipped with fire suppression, the risks remain and are not addressed.

## **II. PUBLIC COUNSEL MOTION TO APPROVE SETTLEMENT AGREEMENT**

The Agreement fails to explain how Groton Wind and Counsel for the Public arrived at the \$160,000 payment to address the enforcement claims filed by Counsel for the Public and others and how the money would be allocated. While the settlement negotiations between Groton Wind and Counsel for the Public may be confidential, I object to the fact that Agreement provides no justification for the monetary figure nor does it show how the amount compares to the cost of removing or relocating the O&M building.

The Livermore Falls State Park which is State owned and managed by NH DRED, has been significantly degraded by the project's interconnection line which bisects the park across the historic 'pumpkin seed bridge'. Two metal poles, each standing over 50' feet tall now straddle the Pemigewasset River in the area of the falls. Numerous power lines span the river between these poles. At least one of the poles is sited on state-owned land. Had Groton Wind fully disclosed the location of the interconnection line on state land as part of its project application, steps likely would have been taken to mitigate for the

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<sup>3</sup> Project roads will be constructed and maintained to allow for year-round access to each Wind Turbine "at a level that permits passage and turnaround of emergency response vehicles."

negative impacts. Any settlement involving the Livermore Falls area should account for the transmission impacts.

**III. CONCLUSION**

I am grateful for the opportunity to participate in this proceeding. While Groton Wind has taken steps to correct for its actions by settling with various parties harmed by the as-built project, the company still insists its actions were within the limits of the certificate. There is no explanation for Groton Wind's defense in this matter, other than a self-serving means of saving money at the expense of New Hampshire residents. Since the project's revisions were part of the project site, they should have been certificated by the Committee. Iberdrola must be held accountable to the conditions set forth in their application. The Groton Wind proceedings and the Committee's subsequent issuing of a certificate were based on this application.

Dated this day of April 14, 2015

By:

/s/ Mark Watson

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cc: Parties to Docket 2010-01