

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

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

**BRIEF OF MARK WATSON LEGAL STANDARD
TO APPLY FOR AMENDING CERTIFICATES**

Mark Watson respectfully submits this document in response to the NH Site Evaluation Committee's ("Committee") April 24, 2015 order requesting the parties submit briefs detailing their position as to the legal standard the Committee should apply when considering Groton Wind LLC's motion amend the Certificate.

Groton Wind LLC ("Applicant") argues that the standard of review can be found in statements made by Committee Counsel Michael Iacopino in an unrelated matter before the Committee but also involving a motion to amend a certificate. (*Motion of Berlin Station LLC for Amendment of the Certificate of Site and Facility, Transcript of Public Meeting held January 10, 2013 at 73-74*) The Applicant states in his motion to amend that the Committee must determine whether its original findings under RSA 162-H:16 were 'affected' or 'undermined' by the amendments. The Applicant's literal adoption of Attorney Iacopino's wording is inappropriate. There is no place within RSA 162-H or the Committee rules where one can find the words 'affected' or 'undermined' nor is it clear what they would mean in this context.

Attorney Geiger has stated that "there really isn't any process or standard articulated in either the statute or the rules for a motion to amend the certificate." (*Groton Wind LLC, Transcript of Public Meeting held April 20, 2015 at 115*) I strongly disagree. The standard is clearly accounted for under RSA 162-H:5 I which states:

No person shall commence to construct any energy facility within the state unless it has obtained a certificate pursuant to this chapter. Such facilities shall be constructed, operated and maintained in

accordance with the terms of the certificate. Such certificates are required for sizeable changes or additions to existing facilities. Such a certificate shall not be transferred or assigned without approval of the committee.

According to the statute, persons seeking to construct an energy facility in the state must first obtain a certificate from the Committee. There is no dispute that such a certificate was granted Groton Wind. Further, any certificated facility must be constructed, operated and maintained in accordance with the terms of the certificate. "Sizeable changes" to any approved project plans require that the Committee again apply the standards identified under RSA 162-H:16. Applicants could also seek declaratory rulings from the Committee on whether proposed project changes meet the threshold for "sizeable changes." Nevertheless, the statute is clear in its requirement.

What the statute does not contemplate is an applicant who chooses to construct his project outside the terms and conditions of the Certificate and then seek forgiveness later in the form of a motion to amend. This is the situation before the Committee with Groton Wind. In this matter, it is still appropriate to follow RSA 162-H:5 and require that the Committee apply the standards under RSA 162-H:16 to determine whether the project, as built, results in an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety or unduly interferes with the orderly development of the region.

Finally, a quick review of prior dockets listed on the Site Evaluation Committee website did not reveal any instance where an applicant constructed his project based on amended plans and later returned to the Committee for approval.

Dated this day of June 5, 2015

By:

/s/ Mark Watson

cc: Parties to Docket 2010-01