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STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
DIVISION OF PARKS AND RECREATION
Bureau of Historic Sites
172 Pembroke Road Concord, New Hampshire 03301
Phone: 603-271-3556 www.nhstateparks.org

March 23, 2021

His Excellency, Governor Christopher T. Sununu
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Bureau of Historic Sites to budget and expend funds from a Settlement Agreement between Groton Wind, LLC and Counsel to the Public, and approved by the New Hampshire Site Evaluation Committee (Docket No. 2010-01), in the amount of $90,000 effective upon Governor and Executive Council approval through June 30, 2022. 100% Other Funds (Agency Income).

Funds are to be budgeted in FY 2021 through FY 2022 in the following account:

03-035-035-351510-52040000, Groton Wind Settlement Fund				
Class-Account	**Description**	**FY21 Current Adjusted Authorized**	**Requested Action**	**FY21 Revised Adjusted Authorized**
009-407079	Agency Income	$0	($90,000)	($90,000)
	Total Revenue:	**$0**	**($90,000)**	**($90,000)**
048-500226	Contractual Maintenance B&G	$0	$90,000	$90,000
	Total Expenses:	**$0**	**$90,000**	**$90,000**

EXPLANATION

In 2015, in accordance with the Settlement Agreement between Groton Wind, LLC and Counsel to the Public, approved by the New Hampshire Site Evaluation Committee (SEC) in Docket No. 2010-01, the New Hampshire Department of Justice (NHDOJ) accepted payment on behalf of the State in the amount of $160,000. A portion of the funding in the amount of $10,000 was retained by the NHDOJ to defray its expenses associated with SEC Docket No. 2010-01. The remaining funds of $150,000 were provided to the Bureau of Historic Sites to support park management and park infrastructure at Livermore Falls.

While DNCR has since spent a portion of those funds since FY2016, we still retain a balance in reserve in anticipation of completing a final comprehensive plan of park management and infrastructure improvements for the remainder of FY2021 and through FY2022. These plans include tree removal and pruning, construction of a parking lot on the Campton side, trail development, installation of interpretive signage, and safety improvements (fencing) near the mill ruins.

For these purposes, we request to budget $90,000 at this time so we may begin execution of this plan via contracting of services to begin this spring.

The following appropriation is being requested for Fiscal Years 2021 and 2022:

Class 48- Contractual Maintenance - $90,000, amount budgeted to cover contracts for infrastructure and safety improvements and park development projects.

Respectfully requested,

Sarah L. Stewart
Commissioner

STATE OF NEW HAMPSHIRE
SITE EVALUATION 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.

September 21, 2015

FINAL DECISION AND
ORDER ON OUTSTANDING ISSUES

I. Introduction

This decision and order resolves all outstanding issues in this docket. During deliberations conducted on April 20, 2015 and June 11, 2015 the Site Evaluation Committee (Committee) voted to:

1.) Approve the Environmental Health and Safety Plan submitted by Groton Wind LLC (Applicant) with a minor change;

2.) Grant a motion to amend an agreement between the Applicant and the Town of Groton;

3.) Approve a compliance agreement between the Applicant and the Department of Safety, Office of the Fire Marshal (Fire Marshal);

4.) Approve a settlement agreement between the Applicant and Counsel for the Public;

5.) Grant the Applicant's motion to amend the Certificate of Site and Facility in this docket.

This decision and order memorializes the deliberations and findings of the Committee.

II. Background and Procedural History

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 the Applicant, authorizing the construction and operation of a renewable energy

facility consisting of 24 Gamesa G82 wind turbines, each having a nameplate capacity of 2 megawatts (MW), for a total nameplate capacity of 48 MW (Facility or Project). The Facility is located on a site in the Town of Groton (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 constructed the Facility and began commercial operations.

On December 31, 2012, the Site Evaluation Committee (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 and alleging that the Applicant failed to reimburse expenses incurred by the Town. The Applicant responded in writing to the concerns raised by Rumney. Rumney replied and advised the Committee that the issue concerning maintenance of the turbine roads within the Site during the winter months remained unresolved. On March 18, 2013, the Committee received a letter from Mr. Mark Watson (Watson) raising his concerns regarding the Applicant's "failure to provide year-round access for emergency vehicles" to the Facility. Subsequent meetings amongst safety officials resulted in the drafting of an Environmental Health and Safety Plan (Safety Plan) by the Applicant. The Safety Plan was filed with the Committee on October 11, 2013. Counsel for the Public, Rumney, Watson and the Fire Marshal objected to the Safety Plan as filed.

On January 14, 2013, James Buttolph on behalf of certain intervenors (Buttolph) in this docket filed a letter with the Committee asking the Committee to re-open the record. In support of the request, Buttolph alleged that the construction of the Facility did not comport with the plans as approved by the Committee and that there were significant revisions to the plans

specifically regarding the location of the operation and maintenance (O&M) building and the location of two wind turbines. Buttolph also asserted that the revisions to the Facility as planned were outside of the purview of the Wetlands Permit conditions and the Alteration of Terrain Permit conditions.

The Applicant responded to Buttolph's letter on January 16, 2013. 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 (DES) as modifications or amendments to the Wetlands Permit and the Alteration of Terrain Permit. The Applicant asserted that further review by the Committee was unnecessary under the terms of the Certificate. Rumney joined Buttolph's concerns about the relocation of O&M building.

On February 13, 2013, Counsel for the Public responded to the Buttolph 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, suspend the Certificate.

On August 12, 2013, the Committee received a letter from Investigator Ron Anstey of the Fire Marshal's Office. In his letter, Investigator Anstey alleged that statements made in testimony by the Applicant's representatives at the time of the adjudicative hearing were not truc. In addition, Investigator Anstey's letter alleged that the Applicant failed to comply with applicable fire and building codes and, therefore, has failed to comply with the Decision Granting the Certificate with Conditions. Investigator Anstey recommended that all operation on the Site cease until all safety concerns, plans, reviews, and required inspections were completed and approved.

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 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 contained additional relevant codes and provisions. The Applicant responded on November 18, 2013.

Ms. Marianne Peabody, Mr. Watson and Mr. Mario Rampino were granted intervenor status in this docket.

On December 4, 2013, the Applicant filed a Contested Motion to Amend Certificate of Site and Facility. Counsel for the Public, Watson, Buttolph, and the Fire Marshal objected on December 16, 2013.

On April 14, 2014, the Applicant filed a Contested Motion for Approval of an Amendment to the Town of Groton Agreement. The Applicant further requested the Committee to amend the Certificate so that it incorporates and reflects the amended Agreement. Counsel for the Public and Buttolph objected to the Applicant's request. 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 Marshal. Shortly thereafter 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.

The Fire Marshal's Motion to Stay was granted and the Committee ordered the Fire Marshal to notify the Committee of the Applicant's compliance status within 30 days.

On June 9, 2014, the Fire Marshal reported that the Applicant was either compliant or in the process of becoming compliant with the Compliance Agreement.

On June 12, 2014, the Applicant filed an e-mail received from counsel for Rumney advising the Committee that Rumney had no outstanding disputed issues with the Applicant.

On July 16, 2014, Counsel for a Public advised the Committee that he reached a Settlement Agreement with the Applicant, filed a Withdrawal of Enforcement Claims, and filed a Motion to Approve Settlement. Buttolph objected on July 28, 2014.

On August 20, 2014, all members of the Buttolph Group of Intervenors withdrew all claims against the Applicant and relinquished intervenor status in this docket.

On October 6, 2014, the Fire Marshal filed a Final Report. The Fire Marshal informed the Committee that the Applicant was in full compliance.

On April 20, 2015, the Committee conducted an adjudicative hearing addressing the issues of (i) the Facility's road safety and training of first responders, including the Safety Plan and the proposed amendment of Agreement between the Applicant and Town of Groton; (ii) fire safety, including the Compliance Agreement between the Fire Marshal and the Applicant; and (iii) the Settlement Agreement between the Applicant and Counsel for the Public dated July 9, 2014.

At the adjudicatory hearing on April 20, 2015, Counsel for the Public requested the Committee to continue the hearing on the Applicant's Motion to Amend the Certificate and to develop a procedural schedule allowing the parties to conduct additional discovery and

settlement negotiations. Watson concurred with Counsel for the Public's request. The Applicant objected to the request but acknowledged that a short delay would not cause prejudice. The Committee extended the date of the final hearing on the Motion to Amend the Certificate to June 11, 2015.

On June 5, 2015, the Applicant and Counsel for the Public filed a Settlement Agreement. Under the Agreement, Counsel for the Public withdrew his Objection to the Applicant's Motion to Amend.

III. Analysis

A. Project's Road Safety and Training of First Responders.

1. Initial Complaints

In the letters received by the Committee on December 31, 2012, Rumney alleged the following violations of the Certificate by the Applicant:

- The Applicant breached an agreement with Rumney by failing to reimburse Rumney for the materials and time Rumney spent on making temporary repairs of Groton Hollow Road;

  The Applicant failed to conduct an engineering inspection and complete report identifying the conditions of the Groton Hollow Road following the conclusion of the project;

- The Applicant refused to maintain the Facility's roads during the winter months jeopardizing the ability of the emergency response vehicles to have year-round access to the Facility;

- The Applicant failed to train Rumney's emergency responders as was agreed between Rumney and the Applicant;

- The Applicant failed to properly communicate with Rumney and failed to apprise Rumney of the current status of the Facility;

- The billing for the first super load delivery was not paid;

- The construction and operation of the Facility caused Rumney unnecessary and unforeseeable expenses.

The Applicant responded to the concerns raised by Rumney on January 11, 2013 and January 14, 2013. The Applicant asserted the following:

- The Applicant would reimburse Rumney for the materials and time spent on repairs of Groton Hollow Road;

- The engineer inspection was conducted on January 10, 2013;

- Plowing of the Facility roads in the winter time may create a safety hazard.

- Access to the Facility's roads would be provided by a snow cat or similar vehicle;

- The Applicant provided classroom training, Site review training and review of safety plans to Rumney's emergency responders. As to turbine climbing training, the Applicant asserted that it was not required by the Certificate;

- The Applicant invited Rumney to contact the Applicant directly with any questions and concerns it may have;

- The Applicant asserted that it would pay for the first super load delivery;

- Finally, the Applicant refused to pay for any additional administrative expenses Rumney might have incurred as a result of the construction and operation of the Facility.

By the letter dated January 16, 2014, Rumney advised Groton that Rumney's response[1] to emergencies at the Facility will be delayed due to the Applicant's refusal to plow the Facility's roads. Rumney also urged the Applicant to reconsider its position regarding the plowing of the Facility's roads. On February 11, 2013, Rumney advised the Committee that the roads remained unplowed.

[1] Groton contracts with Rumney to provide emergency and fire services.

On March 18, 2013, Watson asserted his concerns relating to the emergency access to the Facility. Watson stated that his house is located near the Facility and may be impacted if an emergency on the Site was not addressed in a timely manner. He stated that the Applicant's offer to provide a snow cat (a fully tracked vehicle designed to travel of snow) is inadequate because it does not and will not allow the required number of responders to be present at the Site in case of emergency. Mr. Watson further asserted that the Applicant's failure to maintain and plow the Facility's roads is in violation of the Applicant's Agreement with Groton and Condition of the Certificate that incorporates that Agreement.

During the informal meeting held on April 24, 2013, the parties, once again, addressed the issues of training of emergency responders and clearing of the Facility's roads. The Applicant indicated that it relied on "self-help" to deal with emergency situations at the Site. The Applicant further indicated that the company's employees were specially trained with respect to the types of emergencies that might occur at wind farms. As to the roads, the Applicant asserted that plowing of the roads would be dangerous and futile due to the amount of snow, windblown conditions, and the fact that even with plowing, the roads will often be snow covered within a short period of time. As a result of these concerns, the Applicant procured 3 large track vehicles. Each vehicle can hold up to 15 people. The Applicant has also procured a "gator type" vehicle which is a small track/large wheeled vehicle. The Applicant indicated that there are 4 Iberdrola personnel qualified to operate these vehicles, as well as some of their contractor personnel. Rumney continued to express concerns about inability to access the Site and lack of training.

2. Environmental, Health and Safety Plan.

On October 11, 2013, the Applicant filed an Environmental, Health and Safety Plan (Safety Plan) with the Committee. The Plan was executed by Roger Thompson (Groton Fire Chief), Raymond Valentine (Assistant EMS Director for the Town of Rumney), Kenneth Ward (Rumney Fire Chief), John Fischer (Hebron Fire Chief), and David Coursey (Rumney Fire Captain). The Safety Plan included several components: (i) a Hazard Communication Program, (ii) an Emergency Response Plan; and (iii) a Fire Prevention Plan.

The Hazard Communication Program described responsibilities of personnel at the Facility as they relate to hazard communications. Specifically, it provided guidance for employees for (i) actions to be taken if a safety hazard is found; (ii) a process to follow prior to conducting work at the wind plant; (iii) how to maintain MSDS[2] binders at the plant; (iv) proper handling, storage and transportation of compressed gasses which may be used at the plant; (v) proper labeling of all chemicals and lubricants at the plant; (vi) training requirement applicable to the Hazard Communications Program; and (vii) inspection and recordkeeping requirements applicable to the Hazard Communication Program.

The Emergency Response Plan outlined the immediate and supplemental actions to be taken by plant personnel in the event of emergency, *i.e.* project evacuation, medical emergency, fire, hurricane, lightening, flooding, extreme heat, snow and winter weather, icing on turbines or external equipment, high winds, earthquakes, oil/chemical spill, bomb threat, sabotage, violence in the workplace, and infectious disease/pandemic. According to the Emergency Response Plan, all Iberdrola personnel assigned to the Facility are required to maintain current certificates in first

[2] MSDS: Material Safety Data Sheets

aid, CPR and the use of AED. The Applicant's technicians and managers are trained in and maintain proficiency in fall protection and rescue from wind turbines.

The Fire Prevention Plan described responsibilities of personnel at the Facility as they relate to fire prevention. The Fire Prevention Plan specifically provided guidance to Iberdrola employees for (i) accumulation of combustible material or combustible waste; (ii) storage of flammable material; (ii) controlling ignition sources; (iii) training requirements for employees with regard to fire prevention; and (iv) inspection and recordkeeping.

The Safety Plan also indicates that the Facility's management will provide the following training to applicable emergency response personnel: (i) project specific safety orientation; (ii) a safety video; (iii) Level A safety orientation training; (iv) Level B safety orientation training; (v) a Site tour, including the base of a wind turbine; (vi) question and answer period; and (vii) written examination with passing score of 80%.

On October 18, 2013, Counsel for the Public filed a response to the Applicant's submission of the Safety Plan. Counsel for the Public alleged that the Plan's reference to other existing Plans and Program (Hazard Communications Program, Emergency Response Plan and Fire Prevention Plan) was insufficient because it failed to provide copies of said Plans and Program for the Committee's review.

On November 14, 2013, Rumney and its new Fire Chief, Dave Coursey, raised concerns relating to the Safety Plan. Rumney advised the Committee that, at the time of the execution of the Plan, the Rumney Fire Chief Ken Ward, Fire Commissioners Dave Coursey and Jim McCart, and Assistant EMS Director Raymond Valentin did not know what they were signing and did not see copies of the Safety Plan. Rumney also claimed that the Safety Plan failed to address

previously discussed quarterly or biannual meetings between Rumney's first responders and Facility personnel, did not address future training of responders, and did not address the issue of access to the Site.

In correspondence to the Committee, Watson supported Counsel for the Public's and Rumney's arguments. Watson further argued that the Applicant signed an Agreement with Groton agreeing to maintain Facility's roads to allow year-round access to each turbine "at a level that permits passage and turnaround of emergency response vehicles." Said Agreement, in its entirety, was referenced and incorporated in the Committee's Order granting the Certificate. Watson charged that the Applicant's current proposal was an attempt to circumvent the Agreement and avoid maintenance of the roads in direct violation of the Certificate. Watson further alleged that the as-built road grades were different than was presented to the Committee at the time of the adjudicative hearing in this docket. Watson also claimed that the Safety Plan failed to adequately address emergency procedures relating to ice shedding.

On November 18, 2013, the Committee received a response from the Fire Marshal to the Applicant's filing of the Safety Plan. The Fire Marshal asserted concerns about the Plan's failure to specifically address issues concerning the accessibility of the Facility's access roads. Deputy Fire Marshal Ron Anstey reviewed the Safety Plan and determined that it was incomplete. Mr. Anstey identified the following deficiencies of the Plan: (i) it failed to include a specific response plan for emergency services (ii) it failed to identify the level at which the Applicant's employees were certified in first aid; (iii) it failed to identify a procedure for emergency services; (iv) it failed to identify which supplemental emergency actions should and would be taken; and (v) it failed to identify with specificity the training that would be provided.

3. Settlement discussions

On June 12, 2014, the Applicant filed an e-mail received from Rumney's Attorney, Bernard Waugh, indicating that "the Selectmen do not believe that the Town of Rumney *per se* (as a municipality) has any outstanding issue with Groton Wind LLC at the present time." On July 16, 2014, Counsel for the Public filed a Withdrawal of Enforcement Claims and Partially Assented Joint Motion to Approve Settlement Agreement between the Applicant and Counsel for the Public. Counsel for the Public specifically indicated that, subject to the Committee's approval of the Agreement, Counsel for the Public withdrew his objections to the Applicant's Safety Plan.

On September 8, 2014, the Committee received a letter from Watson asserting his continuing objection to the Safety Plan.

During the adjudicatory hearing, the Applicant asserted that the purpose of developing and submitting the Safety Plan was to address the safety concerns of Groton and Rumney. Tr., 4/20/15 at 70. The Applicant further asserted that any dispute about the Safety Plan was moot in light of the Compliance Agreement with the Fire Marshal. Tr., 4/20/15 at 71.

Counsel for the Public assented to the Applicant's request to amend the Certificate so that it incorporates the Safety Plan. Tr., 4/20/15 at 72. Counsel for the Public asserted, however, that Section 3.6.2. of the Plan states that, "[t]he Iberdrola employee **may, if appropriate**, escort emergency services to the location they are needed." Tr., 4/20/15 at 72. Counsel for the Public raised his concern that this provision of the Plan may be read as allowing the Applicant's employees to deny emergency services access to the Site. Tr., 4/20/15 at 72.

Watson concurred with Counsel for the Public' concerns. Tr., 4/20/15 at 75. Watson further expressed his concerns that the Plan does not fully address all possible emergencies and, consequently, is insufficient. Tr., 4/20/15 at 76-77.

The Applicant asserted that the purpose of the Plan is to ensure the safety of the Site. Tr., 4/20/15 at 73. The Applicant further stated that ambiguity, if any, was not intentional. Tr., 4/20/15 at 73. The Applicant agreed to modify Section 3.6.2 of the Plan so that it states as follows: "[t]he Iberdrola employee **shall, if requested**, escort emergency services to the location they are needed." Tr., 4/20/15 at 74-75.

The Safety Plan contains a series of plans and programs that were designed to ensure the safety of the Facility. The programs include, among other things: (i) a Hazard Communication Program that governs actions and communications to be undertaken if various hazards are discovered at the Project; (ii) an Emergency Response Plan which outlines the immediate and supplementary actions that personnel should take in the event of an emergency at the Project, including how to react to emergencies in snow and winter weather; (iii) an Emergency Protocol for blade icing and ice shedding from the turbines; (iv) a Fire Prevention Protocol; (v) fall protection and training; and (vi) a safety training program.

These Plans and Programs were designed and implemented in order to ensure public safety during construction and operation of the Facility. This goal is in direct compliance with the legislatively established goals of this Committee. See RSA 162-H. The incorporation of the Safety Plan into the Certificate will not undermine any of the Committee's original finding under RSA 162-H:16. The Committee finds that it is reasonable to amend Section 3.6.2. of the Safety Plan as requested by the parties in order to avoid any ambiguity in interpretation of the Safety

Plan. Therefore, the Certificate should be amended to incorporate the Safety Plan, as amended, as a condition of the Certificate.

4. Amendment of Agreement with Groton.

On April 14, 2014, the Applicant requested the Committee to amend Section 8.2.1 of the Agreement between Groton and the Applicant so that is states as follows:

> The Owner shall construct and maintain roads at the Wind Farm that allow for access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles. Notwithstanding the foregoing, Owner shall not be required to plow or sand those roads. During periods when Wind Farm roads are snow-covered or otherwise impassable or unsafe for use by emergency response vehicles, Owner shall take the following steps to provide access to the Wind Farm by emergency responders who are responding to calls for assistance from the Owner or its employees or agents: Owner's employees or agents will make arrangements to meet emergency responders at an appropriate location and will provide transportation for those responders via all-terrain vehicles, snow cats or other vehicles as Owner and Town of Groton deem appropriate.

On April 21, 2014, Counsel for the Public objected to the Applicant's request to modify the Agreement with Groton. Counsel for the Public asserted that the issue should be "tabled" until the finalization and approval of the Safety Plan. Buttolph concurred with Counsel for the Public and asserted that "[u]ntil an adequate fire and life safety plan for the Project is in place, the Applicant's request is premature."

On July 16, 2014, Counsel for the Public indicated that, subject to the Committee's approval of the Agreement, Counsel for the Public withdrew his objections to the Applicant's Motion for Approval of Amendment to Town of Groton Agreement.

All members of the Buttolph Group of Intervenors withdrew their claims against the Applicant on August 20, 2014.

During the hearing on the Applicant's Motion to approve the amendment of agreement with Groton, the Applicant asserted that the amendment to the Agreement was negotiated in order to settle issues pertaining to maintenance of the Facility's roads during winter months. Tr., 4/20/15 at 46. According to the Applicant, the Agreement, as amended, provides procedures allowing the emergency responders access to the Facility even when the roads cannot be cleared of snow. Tr., 4/20/15 at 47-48.

Watson objected to the Applicant's request to approve the amendment. Tr., 4/20/15 at 49-50. Watson asserted that the Applicant constructed the roads with grades that are greater than 12%. Tr., 4/20/15 at 49. Watson further asserted that, by constructing these roads, the Applicant violated the conditions of the Certificate. Tr., 4/20/15 at 49-50. Watson requested the Committee to deny the Applicant's request to approve the Agreement with Groton and enforce conditions of the Certificate requiring the Applicant to construct the roads "that allow for access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles." Tr., 4/20/15 at 49-50.

In response, the Applicant asserted that Watson's request was untimely. Tr., 4/20/15 at 52-53. Watson did not file a formal Objection to the Applicant's Motion for Approval of Amendment to Town of Groton Agreement and failed to provide a pre-filed testimony that would identify his objection.

The Committee found Watson's objection to be untimely. In addition, because he did not file a timely objection nor develop his argument with evidence and/or testimony, it is not possible for the Committee to make factual determinations as to how much of the roadways may be graded greater than 12%. Watson's objection to the settlement agreement is overruled.

The Committee also finds that plowing and sanding of the roads at the altitudes and road grade existing at the Facility would be unsafe, increase spring melt off and would, at times, be counter-productive. The amended Agreement resolves the problem of access to the Facility during the months when the roads cannot be plowed and sanded and ensures public safety. The Agreement with Groton does not undermine any of the original findings made by the Committee under RSA 162-H:16. Therefore, the Applicant's Motion for Approval of Amendment is granted. The Certificate should be amended so that it incorporates the amended Agreement with Groton.

B. Fire Issues

1. Position of the Parties.

- On August 12, 2013, the Committee received a letter from Investigator Ron Anstey, an investigator with the Fire Marshal. Investigator Anstey alleged that the Applicant failed to submit plans for review and approval by the Fire Marshal prior to ordering construction of the Facility.

- The Applicant was operating the Facility and using the structure without a certificate of occupancy.

- The Applicant failed to provide structural plans, site plans, fire protection plans and plans for automatic fire suppression in the nacelles of each turbine.

- The Applicant failed to respond to the Fire Marshal's comments to the plans that were filed.

- The Applicant failed to involve the Fire Marshal in fire protection designs at an early stage.

- The Applicant's witness made material misrepresentations of fact at the adjudicative hearing.

In correspondence dated October 18, 2013, Investigator Anstey set forth the Applicant's non-compliance with the following rules and regulations:

a. The State Building Code (International Building Code or IBC), 2009 edition:

- Section 107.1 – requires submission of documents consisting of construction documents, statement of special inspections, geotechnical and other data;
- Section 105.1 – requires any owner or authorized agent who intends to construct, enlarge, alter, repair to file application to the building official and obtain the required permit;
- Section 110.1 – states that construction or work for which a permit is required should be subject to inspection by the building official and such construction or work should remain accessible and exposed for inspection purposes until approved;
- Section 111.1 – states that no building or structure should be used or occupied until the building official has issued a certificate of occupancy.

b. NH State Fire Code - NFPA 1, 2009 edition:

- Section 14.1 – states that "[w]here required by the AHJ[3] for new construction, modification, or rehabilitation, construction documents and shop drawings shall be submitted, reviewed, and approved prior to the start of such work as provided in Section 1.14."
- Section 4.5.3 – states that "[n]othing in this code shall be construed to prohibit a better type of building construction, an additional means of egress, or an otherwise safer condition than that specified by the minimum requirements of this code."
- Section 4.1.4.2.2 – states that "[i]n the event that a fire or explosion occurs, the building or facility shall be sited, designed, constructed or maintained and operations associated with the facility shall be conducted and protected to reasonably reduce the impact of unwanted fire and explosions on the adjacent compartments, emergency life safety systems, adjacent properties, adjacent outside storage, and the facility's structural elements."
- Section 18.2.3.1 - requires that "[a]pproved fire department access roads shall be provided for every facility, building or portion of a building hereafter constructed or relocated."
- Section 18.2.3.1.4 – states that "[w]hen fire department access roads cannot be installed due to location on property, topography, waterways, nonnegotiable grades or other similar conditions, the AHJ shall be authorized to require additional fire protection features.

c. NH State Fire Code - NFPA 101, 2009 edition contains requirements applicable to O&M building;

[3] AHJ: Authority Having Jurisdiction.

d. NH State Fire Code – NFPA 850 (Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations):

- Chapter 4 - addresses the fire protection design process and includes references to the stakeholders, inputs to the design, the design basis and other criteria.
- Chapter 10 - Identification and Protection of Hazards for Wind Turbine Generating Facilities, Section 10.5.3 addresses the fire protection in wind generating facilities.

On November 18, 2013, the Applicant advised the Committee that it "filed all of the drawings and other documentation requested by Investigator Anstey." Settlement negotiations followed while the Applicant maintained its objection to the Codes identified in Investigator Anstey's letter and reserved the right to supplement its objection.

2. Compliance Agreement.

On April 16, 2014, the Fire Marshal filed a Notice of Compliance Agreement with the Committee. Under this Agreement, the Applicant agreed to become compliant with the state fire code and the state building code, as determined by the Fire Marshal, and to cure the following deficiencies:

- Using and/or occupying the building or structures without satisfying the requirements of the Fire Code, without approval, and without a certificate of occupancy;
- Fire suppression systems not installed in the nacelles;
- No inspections were conducted on the towers or nacelles;
- No inspections were conducted on the O&M building during construction;
- The separation between the S-1 (garage area) and B (office area) occupancies requires a one hour fire separation (NFPA 1, table 6.1.14.4; NFPA 101, table 6.1.14.4, NFPA 101, 38.1.2);
- The emergency lighting at the exterior exits must have dual light fixtures (NFPA 70)

- The emergency lighting in the shower room is obstructed (NFPA 70);

- The wall mounted smoke detectors in the SCADA room, and records room are mounted too low (NFPA 72, 17.7.3.2.1);

- The smoke detectors in the manager's office and the conference room are too close to the HVAC diffusers (NFPA 72 17.7.4.1);

- The fuel tank must be protected from vehicular damage. (NFPA 30A, 4.3.7.2).

See Compliance Agreement, Ex. A.

The Applicant further agreed to provide the following documentation:

- Final shop drawings and a schedule for installation of fire suppression in the nacelles;

- Documentation demonstrating that lightning protection meets the requirements of RSA 323 and NFPA 780 has been satisfied;

- An emergency plan meeting the requirements of NHPA 1, 10.9 (NFPA 1, 10.9.1 and NFPA 18.2.3.1.4);

- Reports of special inspections;
- An approved plan for reporting a smoke detector or fire suppression system activation in nacelles;

- The remainder of special inspections report;

- Documentation that electrical, plumbing, mechanical and structural inspections were completed. (IBC, 1 10.1, and Chapter 17);

- Mechanical details on heating appliances, including gas piping and combustion air calculations (NFPA 54, 5.4.1 and 9.3); and

- Calculations from a mechanical engineer for the intake and exhaust louver.

See Compliance Agreement, Ex. A.

The Applicant further agreed to install fire suppression in each of the 24 turbines before the start of fire season.

On October 6, 2014, the Fire Marshal, advised the Committee that the Applicant complied with all requirements of the Compliance Agreement.

During the adjudicative hearing, the Fire Marshal advised the Committee that the Applicant continued to operate the Facility in compliance with the Compliance Agreement and there were no ongoing concerns relating to the construction and operation of the Facility. Tr., 4/20/15 at 62.

The Applicant argues that implementation of the Compliance Agreement resolves any and all issues raised by the Fire Marshal in this docket. Tr., 4/20/15 at 62-63. As a result of implementation of the Compliance Agreement, the Applicant and the Facility became compliant with State's building and fire codes. Tr., 4/20/15 at 62-63. Counsel for the Public and Watson agreed that implementation of Compliance Agreement effectively resolved any and all issues raised by the Fire Marshal. Tr., 4/20/15 at 63-64.

The purpose of the Compliance Agreement is to protect public health and safety by ensuring that the Project was constructed and is operated in compliance with building and fire codes. Such an objective is in direct compliance with the Committee's statutory goals and purposes. By approving the Compliance Agreement and incorporating its provisions in the Certificate, the Committee will assure that the Project was constructed, is operated, and will continue to be operated in compliance with building and fire codes. The Compliance Agreement does not alter the Committee's initial statutory findings and provides additional protection for the public health and safety. The Certificate should be amended so that it incorporates the Compliance Agreement filed in this docket.

C. Settlement Agreement with Counsel for the Public dated July 9, 2014

On July 9, 2014, Counsel for the Public and the Applicant entered into a Settlement Agreement. Pursuant to the Settlement Agreement, the parties settled the enforcement claims raised by Counsel for the Public.

In consideration of Counsel for the Public's agreement to withdraw the enforcement claims, the Applicant agreed to make a public benefit payment of $160,000.00 to be used to support the "Livermore Falls Project" (up to $10,000.00 of the payment may be used to offset the costs and expenses incurred by Counsel for the Public). The Applicant also agreed to maintain an emergency plan satisfactory to the Fire Marshal. The Agreement was expressly conditioned upon Committee's acceptance and approval of all of its provisions without change or condition.

The Motion to Approve Settlement Agreement between Counsel for the Public and the Applicant was filed on July 16, 2014. On July 28, 2014, Buttolph objected to Counsel for the Public's request to approve the Settlement Agreement. On August 20, 2014, however, all members of the Buttolph Group of Intervenors withdrew all claims against the Applicant.

During the adjudicative hearing, Counsel for the Public asserted that the enforcement issues raised in this docket were very concerning. Tr., 4/20/15 at 25. All of the issues, however, were effectively resolved by the Applicant. Tr., 4/20/15 at 26-27. Specifically, Counsel for the Public noted that the issue concerning the location of the O&M building was resolved as a result of settlement agreements with the most affected residents Peabody and Rampino. Tr., 4/20/15 at 26-27. The issue of access to the Facility during the winter months was further resolved as a result of the Amendment of the Agreement with Groton. Tr., 4/20/15 at 27. Issues surrounding violations of the building and fire codes were resolved as a result of implementation of the Compliance Agreement. Tr., 4/20/15 at 27. In addition, Counsel for the Public noted that, as a

part of the Settlement Agreement, the Applicant acknowledged its failure to communicate and cooperate by making the following statement:

> Iberdrola Renewables is a company that prides itself on transparency and clear communication. Iberdrola Renewables 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 some members of the local community and was not explicitly authorized by the certificate. While we believe that we acted appropriately, we regret that this situation has resulted in misunderstandings and a lack of trust with those impacted. Iberdrola Renewables is working diligently to reestablish its reputation as a good corporate citizen within the State of New Hampshire, as it does at all of its nearly 60 renewable projects throughout the United State and has taken a number of important steps to rectify the situation with respect to the operations and maintenance facility.
>
> Iberdrola Renewables also acknowledges that a lack of close coordination with the State Fire Marshal's office ahead of construction has led to further misunderstanding and a lack of trust when it comes to fire safety issues. Safety is the number one concern for Iberdrola Renewables, both for the communities it serves and its own employees and contractors. With all of this in mind, we have reached an agreement with the State Fire Marshal's office on an action plan which addresses all concerns.

Tr., 4/20/15 at 27-28.

Watson requested the Committee to deny Counsel for the Public's request to approve the Agreement. Tr., 4/20/15 at 34. Watson asserted that the Agreement does not provide an explanation or justification for the sum of $160,000.00 as a public benefit payment. Watson further asserted that the transmission line from the Facility significantly affected Livermore Falls State Park and stated that the line's effect on the aesthetics of the Park was not disclosed to the Committee during adjudicatory hearing in this docket.

The Applicant responded by stating that Watson has never formally objected to the Counsel for the Public's request to approve the Agreement. Tr., 4/20/15 at 38-39. The Applicant also advised the Committee that the transmission line was constructed within an existing right of way. The Applicant does not own the transmission line. The Applicant also noted that the location of the line was clearly disclosed to the Committee during its proceedings. The Committee notes that, with the exception of Watson, the parties who objected to the Counsel for the Public's request withdrew their claims and objections. The Committee also notes that the Applicant has resolved all outstanding health and safety issues raised in this docket through settlement negotiations and agreements with affected parties. There is no reason to believe that the Agreement is contrary to the public policy or goals identified by the legislature in RSA 162-H. To the contrary, the Agreement provides additional off-site mitigation in the form of a payment to support the Livermore Falls Project that will benefit the public interest. The Agreement will have no effect on statutory findings made by the Committee at the time of the issuance of the Certificate. The Committee finds that the Agreement effectively resolves all enforcement issues raised by Counsel for the Public. The Committee approves the Settlement Agreement between the Applicant and Counsel for the Public and amends the Certificate so that it incorporates the Agreement.

D. Settlement Agreement with Counsel for the Public dated June 5, 2015.

On June 5, 2015, Counsel for the Public and the Applicant entered into another Settlement Agreement. Pursuant to the Agreement, Counsel for the Public agreed to withdraw his Objection to the Applicant's request to Amend the Certificate. In exchange, the Applicant agreed to meet with Counsel for the Public, the NH Electric Coop, DRED, and the friends group

for Livermore Falls to discuss what can be done to mitigate the visual impacts of the new poles and wires placed by the NH Electric Coop on and over DRED's property at the Livermore Falls area.[4] The Applicant also agreed to attend a meeting between NHDES and Counsel for the Public to discuss post-construction water quality data for Clark Brook, consult in good faith with DES and Counsel for the Public, address any concerns about the amount of the data or any substantive water quality issues revealed by it, and address any issues reasonably identified by DES as a result of that consultation. The parties further agreed to amend the Certificate so that it states as follows:

> In the event that Groton Wind and Iberdrola intend to make sizeable changes or additions to the Groton Wind facilities, they will make a filing for a certificate of such with the SEC in accordance with RSA 162-H:5, I. For other changes Groton Wind will either seek an exemption, file a petition for a declaratory ruling or notify the SEC and the Attorney General of the change, as may be appropriate under the circumstances.

Agreement, ¶2.

During the hearing, Counsel for the Public indicated that the Settlement Agreement, taken together with all other agreements entered into by the Applicant, alleviated Counsel for the Public's concerns regarding the unapproved relocation of certain parts of the Facility. Tr., 6/11/15 at 36- 43. Counsel for the Public has specifically noted that the Agreement will preclude the Applicant from modifying the Facility in the future without disclosing it to the Committee or Attorney General. Tr., 6/11/15 at 39.

Watson took no position as to the Applicant's and Counsel for the Public's request to approve the Settlement Agreement.

[4] The Agreement between the Applicant and Counsel for the Public addressing the Livermore Falls was made in addition to the prior Agreement to provide $160,000.00 for support of Livermore Falls Project.

The Applicant advised the Committee that, if adopted, it will follow the Agreement's conditions and will ensure that no modification of the Facility is done without proper disclosure and/or approval. Tr., 6/11/15 at 50. The Applicant assured the Committee that it has effective procedures set forth in place allowing any effected person to raise his or her concerns to the management team of the Facility and ensuring prompt resolution of these concerns. Tr., 6/11/15 at 51.

There is no reason to believe that the Settlement Agreement is contrary to the public policy or goals identified by the legislature in RSA 162-H. The settlement agreement provides additional off-site mitigation and sets forth procedures that will avoid future disputes. The Agreement will have no effect on statutory findings made by the Committee at the time of the issuance of the Certificate. The Joint Motion to approve the Agreement between the Applicant and Counsel for the Public is granted. The Certificate shall be amended so that it incorporates the Settlement Agreement between the Applicant and counsel for the Public dated June 5, 2015.

E. 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 Applicant seeks to amend the Certificate to reflect the "as-built" specifications of the O&M building and to approve its new location. The Applicant also requests 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 Applicant also seeks approval of other minor changes to the Certificate.

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

On February 12, 2014, Rampino withdrew his claims against the Applicant and relinquished his status as intervenor. In withdrawing his claims, Rampino also withdrew any objection to the Applicant's Motion to Amend the Certificate. On March 24, 2014, Peabody withdrew her claims against the Applicant and relinquished her status as an Intervenor. In withdrawing her claims, Peabody also withdrew any objection to the Applicant's motion to amend the Certificate.

Members of the Buttolph Group of Intervenors withdrew their claims on August 20, 2014. As indicated above, Counsel for the Public withdrew his enforcement claims and Objection to the Applicant's Motion to Amend the Certificate pursuant to the Settlement Agreements dated July 9, 2014 and June 5, 2015.

Watson objected to the Applicant's request to amend the Certificate. Watson emphasized that the Applicant constructed the Facility in violation of the Certificate without advising the Committee of the revisions to the Facility. Tr., 6/11/15 at 32-33. Watson asserted that the Applicant intentionally failed to disclose the revisions to the Committee in order to avoid adjudication of these issues. Tr., 6/11/15 at 33-34. Watson urged the Committee to consider the Applicant's actions and intent and issue a ruling that would preclude such actions in the future. Tr., 6/11/15 at 35.

Counsel for the Public argued that the Applicant constructed the Facility in violation of the Certificate. Tr., 6/11/15 at 38. Counsel for the Public urged the Committee, however, to grant the Applicant's request to amend the Certificate. Tr., 6/11/15 at 38. Counsel for the Public opined that although the Applicant did not adhere to the requirements of the Certificate, it

remedied the potential adverse effect of violation of the Certificate by entering into the various settlement agreements. Tr., 6/11/15 at 36-37.

The Applicant asserted that the revisions to the original plans did not alter the Committee's original findings under RSA 162-H:16. Tr., 6/11/15 at 45; Ex. A, AH4 at 8-10. The Applicant further asserted that the revisions provide several environmental benefits by reducing the overall property impacts at the site from 115.6 acres to 103 acres, reducing impacts to wetlands and reducing proposed clearing within a 50' buffer to two perennial streams from 12,400 square feet to 4,250 square feet. Tr., 6/11/15 at 45; Ex. A, AH4 at 5-6. The Applicant also asserted that the revised O&M building location avoided the need to cross Clark Brook. The footprint of the O&M building was reduced as well. Tr., 6/11/15 at 25; Ex. A; AH 4 at 5.

The Committee notes that the original arguments made by the parties on the issues outlined in the Motion to Amend focused on the authority of the DES. The parties argued about whether there was an appropriate delegation of authority and subsequently whether any delegation of authority was appropriately handled by the DES. The Committee finds, however, that it has no authority to determine whether another state agency acted appropriately. The focus of inquiry should be on whether the Applicant should have sought the Committee's approval. It is undisputed that the Applicant was required to bring the revised construction plans to DES because they implicated the Wetlands Permit and the Alteration of Terrain Permit. However, going to DES while necessary was not sufficient. This Committee should have been notified of these types of changes because they affect more than just the permits issued by DES. The Committee finds that the Applicant should have filed a Motion to Amend the Certificate with the Committee prior to making changes.

Some changes reflected on the revised construction plans submitted by the Applicant do not constitute substantial changes or additions to the Facility that would trigger a need for a new Certificate. Specifically, re-routing of the overhead electrical transmission interconnect (Revision 2) and re-alignment of a portion of Groton Hollow Road to avoid an archeological sensitive area (Revision 5) were approved by the Committee as part of the original proceedings. Adjustment of a short segment of the East Ridge overhead collector transmission line (Revision 3) and reduction of the elevation of Turbine W2 to assure that it would be installed on a bedrock foundation (Revision 6) were minor revisions.

However, some of the changes deviated from the original plans approved by the Committee in ways that implicated more than the DES permits. Specifically, the Committee finds that three out of eight revisions that were identified by the Applicant went beyond the type of matters that are delegated to DES. The first revision is the placement of the O&M building (Revision 1). That change implicates issues beyond those that would be considered in a Wetlands Permit or an Alteration of Terrain Permit. Second, the East Ridge access road was revised resulting in the construction of turbines E2, E3 and E4 in places that were different than originally planned and approved (Revision 4). Third, approximately 700 linear feet of overhead transmission line was relocated east of turbine W1 (Revision 7). Each of these three revisions affects matters that are beyond the concern of DES in its supervision of the Wetlands and Alteration of Terrain Permits for this Facility. It was important and prudent for the Applicant to consult with DES and seek amendments to the Wetlands and Alteration of Terrain Permits. However, seeking approval from DES, while necessary, was not sufficient by itself. The Applicant should have brought the revisions to the attention of the Committee before

construction by way of a Motion to Amend the Certificate. The Applicant failed to do so. Moreover, the Applicant did not provide notice or even a copy of its DES transmittal letter to the Committee.

The Applicant is fortunate that the revisions do not create an unreasonable adverse impact on aesthetics, historic sites, air quality, water quality, the natural environment or public health and safety. All of the revisions are within the footprint of the property and do not have an effect on the development of the region. Neither the Town of Groton nor the Town of Rumney express present concerns about the revisions as they may affect the development of the region. Revisions 1, 4, and 7 do not have the effect of undermining the findings originally made by the Committee pursuant to RSA 162-H:16. Furthermore, Revisions 1, 4 and 7 also have substantial benefits that outweigh any minor adverse impacts. Specifically, the revisions minimize the clearing and grading and impact on the wetlands and ensure smaller footprint of the Project and O&M building.

In addition, we note that the Applicant has been able to reach a number of settlement agreements which are positive changes that have already resulted in the effective amendment of the Certificate. Finally, the Committee finds that the Applicant will be precluded from making sizable changes and addition of the Facility in the future without advising the Committee pursuant to the Agreement with Counsel for the Public.

The Committee finds that revisions of the Facility performed by the Applicant are reasonable and do not undermine original findings made under 162-H:16 in this docket. Therefore, the Committee grants Applicant's Motion to Amend and amends the Certificate to

reflect the as-built Facility as identified on the map submitted to the Committee on June 11, 2015 as Exhibit D.

This Final Order resolves all outstanding issues in this docket. However, we believe that it is important to note that most, if not all, of the issues raised in this docket would have been avoided if the Applicant had, at the very least, notified the Committee and Counsel for the Public of the changes that it intended to undertake. The Committee expects that facilities will be sited, constructed and operated in accordance with specifications, terms and conditions set forth in the Application and the Certificate. The Committee's consideration in granting a Certificate includes all of the statutory concerns in RSA 162-H. A common sense approach would have alerted the Applicant that notice and approval from the Committee may be required. The failure to alert the Committee has resulted in a multi-year, multifaceted enforcement docket. The Committee trusts that this Applicant and all future applicants understand that changes and modifications to a facility that are not specified in a Certificate should be brought to the attention of the Committee before, and not after, shovels go into the ground.

Conclusion

For the reasons set forth above,

1. The Applicant's request to approve the Environmental, Health and Safety Plan is granted. The Certificate of Site and Facility is amended as follows:

   The Environmental, Health and Safety Plan, attached as Appendix I, as amended, shall be a part of the Certificate of Site and Facility in Docket No. 2010-01, and the Conditions contained therein shall be conditions of the Certificate. Section 3.6.2. of the Environmental, Health and Safety Plan shall be amended to state the following:

"[t]he Iberdrola employee **shall, if requested**, escort emergency services to the location they are needed."

2. The Applicant's Motion for Approval of Amendment to the Town of Groton Agreement is granted. The Certificate of Site and Facility is amended as follows:

   The Amendment to the Agreement between the Town of Groton and Groton Wind, LLC, Developer/Owner of the Groton Wind Power Project, attached as Appendix II, shall be a part of the Certificate of Site and Facility in Docket No. 2010-01, and the Conditions contained therein shall be conditions of the Certificate.

3. The Compliance Agreement between the Applicant and Office of Fire Marshal is approved. The Certificate of Site and Facility is amended as follows:

   The Compliance Agreement between the Applicant and Office of Fire Marshal, attached as Appendix III, shall be a part of the Certificate of Site and Facility in Docket No. 2010-01, and the Conditions contained therein shall be conditions of the Certificate.

4. The Joint Motion to Approve Settlement Agreement between Groton Wind and Counsel for the Public dated July 9, 2014 is granted. The Certificate of Site and Facility is amended as follows:

   The Settlement Agreement between Groton Wind and Counsel for the Public, attached as Appendix IV, shall be a part of the Certificate of Site and Facility in Docket No. 2010-01, and the Conditions contained therein shall be conditions of the Certificate.

5. The Joint Motion to Approve Settlement Agreement between Groton Wind and Counsel for the Public dated June 5, 2015 is granted. The Certificate of Site and Facility is amended as follows:

   The Settlement Agreement between Groton Wind and Counsel for the Public, attached as Appendix V, shall be a part of the Certificate of Site and Facility in Docket No. 2010-01, and the Conditions contained therein shall be conditions of the Certificate.

6. The Applicant's Motion to Amend the Certificate is granted. The Certificate of Site and Facility is amended as follows:

   The Facility shall be constructed and operated in accordance with Exhibit D, attached as Appendix VI, which shall be a part of the Certificate of Site and Facility in Docket No. 2010-01.

SO ORDERED this twenty first day of September, 2015 by the Site Evaluation Committee.

Thomas S. Burack, Commissioner
N.H. Dept. of Environmental Services
Presiding Chairman of SEC

Martin P. Honigberg, Chairman
N.H. Public Utilities Commission
Vice Chairman of SEC

Robert R. Scott, Commissioner
N.H. Public Utilities Commission

Meredith Hatfield, Director
Office of Energy & Planning

Craig Wright, Director
DES – Air Resources Division

Brad Simpkins, Director
DRED – Div. of Forests & Lands

Eugene J. Forbes, Director
DES – Water Division

Dep. Richard Boisvert, Designee
DRED – Div. of Hist. Resources

Kathryn M. Bailey, Commissioner
N.H. Public Utilities Commission
Designated as PUC Engineer

Orr&Reno

William L. Chapman
George W. Roussos
James E. Morris
John A. Malmberg
Douglas L. Patch
Steven L. Winer
Peter F. Burger
Lisa Snow Wade
Susan S. Geiger
Jennifer A. Eber
Jeffrey C. Spear
Connie Boyles Lane
Judith A. Fairclough
Maureen D. Smith
James F. Laboe
Robert S. Carey
Jeremy D. Eggleton
John M. Zaremba
Caroline K. Brown
Heidi S. Cole
Rachel A. Goldwasser
Rebecca E. Perkins
Andrew D. Grosvenor

Lawrence A. Kelly
(Of Counsel)

Neil F. Castaldo
(Of Counsel)

July 16, 2014

Via U.S. and Electronic Mail
NH Site Evaluation Committee
c/o Jane Murray, Secretary
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Re: Docket 2010-01, Groton Wind, LLC

Dear Ms. Murray:

On behalf of Groton Wind, LLC, and Counsel for the Public, enclosed for filing with the Site Evaluation Committee in the above-captioned docket, please find an original and 2 copies of a Partially Assented-to Joint Motion to Approve Settlement Agreement Between Groton Wind and Counsel for the Public.

Please contact me if there are any questions about this filing. Thank you for your assistance.

Very truly yours,

Susan S. Geiger

cc: Service List (electronic mail only)
Enclosures
1178547_1

THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

DOCKET NO. 2010-01

RE: GROTON WIND, LLC

PARTIALLY ASSENTED-TO JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT BETWEEN GROTON WIND AND COUNSEL FOR THE PUBLIC

NOW COME Groton Wind, LLC ("Groton Wind") by and through its attorneys, and Counsel for the Public, Peter C.L. Roth, by his attorneys the Office of the Attorney General ("Counsel for the Public") (together, "the Moving Parties"), and respectfully move the New Hampshire Site Evaluation Committee ("Committee" or "SEC") to approve the Settlement Agreement dated July 9, 2014, between Groton Wind and Counsel for the Public. In support of this Motion, the Moving Parties state as follows:

1. The Moving Parties have entered into a Settlement Agreement (a copy of which is attached) to resolve Counsel for the Public's claims that the Groton Wind Project was not constructed in accordance with the Certificate of Site and Facility issued in this docket and that Groton Wind's Environmental, Health and Safety Plan (filed October 11, 2013) is deficient.

2. In accordance with representations made to the Committee by Counsel for the Public at the June 12, 2014 status conference in this docket, *see* Tr. (6/12/14) p. 35, as well as paragraph 6 of the Settlement Agreement, the Moving Parties hereby submit the Settlement Agreement for the Committee's review and approval.

3. The Committee should approve the Settlement because it resolves a significant dispute between the parties, ending what would be costly and time-consuming litigation with an uncertain outcome. The Settlement Agreement achieves a satisfactory and just result, in that it acknowledges the satisfaction of claims by several property owners near the project, it acknowledges the resolution of claims by the New Hampshire Fire Marshal, and it provides an important benefit to the public by means of a substantial contribution to DRED for the additional protection or enhancement of the Livermore Falls area. At the same time, the Settlement Agreement leaves open proceedings for the amendment of the certificate to seek to permit the present location of the operations and maintenance building.

4. On behalf of the Moving Parties, Counsel for the Public has circulated the Settlement Agreement to the parties to this docket, and has made a good faith effort to obtain concurrence with the relief sought herein from said parties. As of the time of finalizing this motion, the following parties have indicated their positions on it: the Town of Groton assents; the Buttolph/Lewis/Spring Intervenor Group does not assent; and no other party responded.

WHEREFORE, Groton Wind and Counsel for the Public respectfully request that the Committee:

A. Approve the attached Settlement Agreement; and

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

Groton Wind, LLC
By and through its Attorneys,
ORR & RENO, P.A.

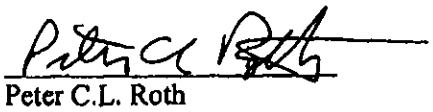
Dated: July 16, 2014

By: _____

Susan S. Geiger
45 South Main Street
P.O. Box 3550
Concord, NH 03301
(603)223-9154
sgeiger@orr-reno.com

COUNSEL FOR THE PUBLIC

ANN M. RICE
DEPUTY ATTORNEY GENERAL



Peter C.L. Roth
Senior Assistant Attorney General
33 Capitol Street
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2014, copies of the within Motion were sent to persons named on the Service List either by electronic mail or first class mail, postage prepaid.

Susan S. Geiger

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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of this 9th day of July, 2014, ("Effective Date"), by and between, Groton Wind, LLC, an Oregon limited liability company ("Groton Wind") and Peter C.L. Roth, in his capacity as Counsel to the Public ("Counsel for the Public") in New Hampshire Site Evaluation Committee ("SEC") Docket No. 2010-01. Groton Wind and Counsel for the Public are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Groton Wind is the owner of an electric generating wind power project ("Wind Project") in Groton, New Hampshire.

B. Counsel for the Public is a party to SEC Docket No. 2010-01 and has asserted, among other things, that: Groton Wind constructed its Wind Project not in accordance with its SEC certificate in violation of RSA 162-H:5, I; the SEC should order Groton Wind to terminate the violation and move the Wind Project's operations and maintenance ("O&M") building to its originally certificated location; and Groton Wind's Environmental, Health and Safety Plan (filed October 11, 2013) is deficient (the "Enforcement Claims").

C. Groton Wind and Counsel for the Public recognize that claims and concerns of certain owners of property in close proximity to the O&M building (i.e. Mario Rampino, Mary Ann Peabody; and Greg Saulnier) have been addressed and settled as to these property owners.

D. Groton Wind and Counsel for the Public recognize that Groton Wind and the Office of the State Fire Marshal have executed a Compliance Agreement to satisfy the State Fire Marshal's issues pending in SEC Docket No. 2010-01, (the "Compliance Agreement"), and have substantially performed the responsibilities required thereby, and that Groton Wind has filed, and the State Fire Marshal has accepted, the Groton Wind Plant "Emergency Plan", filed with the SEC on June 20, 2014 (the "Emergency Plan").

E. Groton Wind and Counsel for the Public are entering into this Agreement to compromise, settle and resolve Counsel for the Public's Enforcement Claims presently pending before the SEC, for Counsel for the Public to permanently withdraw said claims, and for Groton Wind to make a payment in the amount of $160,000 for the public benefit (the "Payment") and to take additional steps described below in paragraph 2.

AGREEMENT

NOW THEREFORE in consideration of the promises, terms and conditions set forth herein the Parties mutually agree as follows:

1. Withdrawal of Enforcement Claims. Within five (5) days after full execution of this Agreement, Counsel for the Public shall: (a) cause all of his claims, protests and objections currently pending before the SEC against Groton Wind and/or the Wind Project related to the Enforcement Claims to be withdrawn by filing a notice of withdrawal with the SEC. Such withdrawal shall become permanent upon receipt by Counsel for the Public of the Payment. Notwithstanding the foregoing, Counsel for the Public reserves the right to participate, in accordance with his powers under RSA 162-H:9, in an adjudicative proceeding with respect to Groton Wind's requests to amend its certificate of site and facility, but agrees that he will not demand that the Wind Project's O&M building be removed or relocated, nor will he seek or assist others with seeking a determination that Groton Wind has violated the terms of its certificate of site and facility, or any provision of law.

2. Payments and Actions by Groton Wind. Groton Wind shall make the Payment to the New Hampshire Department of Justice ("NHDOJ") on or before May 1, 2015. Up to $10,000 of said Payment funds may be retained by NHDOJ to defray its expenses associated with SEC Docket No. 2010-01; these funds shall be used at the discretion of the Attorney General. The remaining funds shall be used by NHDOJ for the public purpose of supporting the "Livermore Falls Project" in Grafton County by the New Hampshire Department of Resources and Economic Development for park management and park infrastructure at Livermore Falls. Groton Wind shall also continue to comply with all of the terms and conditions of the Compliance Agreement and shall maintain in effect an emergency plan satisfactory to the State Fire Marshal, substantially similar to the Emergency Plan.

3. Release. Upon the delivery of the Payment by Groton Wind to Counsel for the Public, Counsel for the Public, on his own behalf, and on behalf of his representatives, employees, contractors, attorneys, agents, successors, and assigns, and any other person or entity claiming by or through any of them, will release, acquit and discharge Groton Wind from the Enforcement Claims. This release expresses a full and complete settlement of the Enforcement Claims, regardless of the adequacy of the above consideration.

4. Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, the Parties warrant and represent to each other as follows:

   a. By signing below, each signatory represents and warrants that he/she is authorized to sign this Agreement on the Party's behalf and to thereby bind such Party to the terms of the Agreement.

   b. Each Party represents and warrants to all other Parties that neither the execution of this Agreement nor the performance of any obligations

hereunder will violate, or constitute a default under or breach of, any other agreement to which any Party is bound.

5. Settlement and Compromise. It is understood and agreed that this Agreement is a settlement and compromise of disputed claims described herein. The Parties agree to the following Iberdrola Renewables statement:

Iberdrola Renewables is a company that prides itself on transparency and clear communication. Iberdrola Renewables 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 some members of the local community and was not explicitly authorized by the certificate. While we believe that we acted appropriately, we regret that this situation has resulted in misunderstandings and a lack of trust with those impacted. Iberdrola Renewables is working diligently to reestablish its reputation as a good corporate citizen within the State of New Hampshire, as it does at all of its nearly 60 renewable projects throughout the United States and has taken a number of important steps to rectify the situation with respect to the operations and maintenance facility.

Iberdrola Renewables also acknowledges that a lack of close coordination with the State Fire Marshal's office ahead of construction has led to further misunderstanding and a lack of trust when it comes to fire safety issues. Safety is the number one concern for Iberdrola Renewables, both for the communities it serves and its own employees and contractors. With all of this in mind, we have reached an agreement with the State Fire Marshal's office on an action plan which addresses all concerns.

6. SEC Approval. The Parties agree that within 10 days of its full execution, they will develop a Joint Motion for Approval of Settlement Agreement and provide the Motion and Settlement Agreement to the parties in SEC Docket No. 2010-01 for concurrence, at which time the terms of this Agreement shall be public. The Parties agree to cooperate in advocating that this Agreement be approved by the SEC in its entirety and without modification. This Agreement is expressly conditioned upon the SEC's acceptance and approval of all of its provisions without change or condition. If the SEC does not accept this Agreement in its entirety in full satisfaction of all of the pending claims against Groton Wind and/or the Wind Project, or if the SEC makes changes to this Agreement, or issues conditions or findings that go beyond the scope of this Agreement, the Settling Parties shall negotiate reasonable modifications to this Agreement if necessary and possible. Such modifications shall take into account the SEC's determinations, and to the extent possible, maintain the original language and intent of this Agreement.

7. Entire Agreement. This Agreement sets forth the entirety of the agreement between the Parties hereto and supersedes all prior negotiations, agreements, representations, and understandings between the Parties with respect to the subject matter hereof, and any reliance upon any prior negotiations, agreements, representations, and understandings between the Parties is expressly waived and disclaimed.

8. Confidentiality of Settlement Negotiations. This Agreement is the product of confidential settlement negotiations. The content of these negotiations, including any documents prepared during such negotiations for the purpose of reaching settlement, shall be privileged and all offers of settlement shall be confidential and without prejudice to the position of any party presenting such offer.

9. Counterparts. This Agreement may be signed in counterparts and facsimile signatures will be accepted in lieu of original signatures.

10. Successors. The terms of this Agreement shall be binding upon the heirs, representatives, successors and assigns of each Party hereto.

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Hampshire.

12. Negotiated Agreement. This Agreement shall not be construed as if it were prepared by one of the Parties, and shall be deemed to have been negotiated by and between the Parties, who are separately represented by counsel. All provisions of this Agreement have been negotiated at arm's length, and this Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision hereof.

13. Survival. All representations and warranties set forth in, and all provisions of, this Agreement shall survive the consummation of the transactions contemplated by this Agreement, and the delivery of any instruments required to be delivered hereunder and be fully enforceable thereafter.

14. Performance of Additional Acts. Each Party agrees that it shall execute and deliver any and all documents and perform any and all acts required on its part or those which may be reasonably necessary to effectuate and complete and facilitate the provisions of this Agreement.

15. Modification of Agreement. Any modification of this Agreement shall be in writing and signed by the Parties.

16. Breach and Remedies. Each Party shall retain its rights to pursue legal and/or equitable actions to remedy breach(es) of this Agreement by the other Party.

17. Third Party Beneficiaries. The Parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Witness

Peter C.L. Roth
Counsel for the Public

GROTON WIND, LLC,
an Oregon Limited Liability Company

LEGAL

Witness

By: _____

Name: Kevin Devlin
Authorized Representative

Its: _____

Witness

By: _____

Name: Scott Jacobson
Authorized Representative

Its: _____