

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2012-___

APPLICATION OF ANTRIM WIND ENERGY, LLC
FOR A CERTIFICATE OF SITE AND FACILITY

UNASSENTED-TO MOTION FOR PROTECTIVE ORDER AND
CONFIDENTIAL TREATMENT

NOW COMES Antrim Wind Energy, LLC (“AWE” or “the Applicant”) by and through its undersigned counsel, and respectfully moves that the Site Evaluation Committee (“SEC” or “Committee”) issue a protective order which preserves the confidentiality of certain information submitted as part of AWE’s Application filed in the above-captioned matter. In support of this Motion, AWE states as follows:

1. NH RSA 162-H:8, V. requires that an application for a certificate of site and facility must contain a statement of assets and liabilities of the applicant and other relevant financial information. Similarly, N.H. Admin. Rule Site 301.03 (b)(7) requires that an applicant file a statement of assets and liabilities.

2. In satisfaction of the foregoing requirements, the Applicant is submitting herewith a document entitled “Antrim Wind Energy, LLC Balance Sheet” containing AWE’s financial information (i.e. a statement of assets and liabilities) which has been marked “Confidential”.

3. The unredacted financial information submitted herewith is commercially sensitive and proprietary, and is not disclosed publicly. Disclosure of this information to the general public or to competitors of AWE could have a materially adverse effect on

the Applicant. The electricity generation and related markets are intensely competitive. Competitive generators safeguard this type of information and take steps to insure that it is not disclosed to the public or to one another for various reasons, some of which relate to preserving their negotiating positions in commercial transactions with third parties.

4. RSA 91-A:5, IV. provides, *inter alia*, that records pertaining to confidential, commercial or financial information, and other files whose disclosure would constitute an invasion of privacy, are exempt from the public disclosure requirements of RSA 91-A. The New Hampshire Supreme Court has established a three-part test for establishing whether documents are exempt from disclosure. *Lamy v. N.H. Pub. Util. Comm'n*, 152 N.H. 106, 109 (2005). Under the first prong, the Committee must determine if the Applicant has identified a privacy interest. If a privacy interest is identified, then the Committee must assess whether there is a public interest in disclosure, i.e. whether the information informs the public about the conduct and activities of their government. Finally, when there is a public interest in disclosure, that interest is balanced against the privacy interest in nondisclosure. *Id.*; *see also Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 553-54 (1997).

5. The New Hampshire Supreme Court has determined that “overhead and operating costs” as well as “financial condition” information constitute “commercial or financial” information within the meaning of RSA 91-A:5, VI. *Union Leader Corp.*, 142 N.H. at 553. AWE has a privacy interest in this information due to the competitive harm described in paragraph 3, above. Thus, the first prong of the *Lamy* test is satisfied. In addition, because disclosure of AWE’s financial statement does nothing to inform the public about the conduct and activities of its government, the second prong of the *Lamy*

test is satisfied and therefore disclosure is not warranted. *See Joint Application of Granite Reliable Power, LLC ("GRP") and Brookfield Power Inc. ("Brookfield Power") for Approval to Transfer Equity Interests in GRP ("Joint Application")*, SEC Docket No. 2010-03, Order on Assented-to Motion for Protective Order and Confidential Treatment (Jan. 19, 2011) (SEC determined that if disclosure does not serve the purpose of informing the public of its government's conduct and activities, then disclosure is not required.) Moreover, even if there were a public interest in disclosure, such interest is clearly outweighed by AWE's privacy interests in maintaining the confidentiality of its competitively sensitive financial information.

6. This Committee has employed the above-referenced balancing test in the past and has granted protective treatment of similar financial information. *See Application for Certificate of Site and Facility for the Granite Reliable Power Wind Park in Coos County*, SEC Docket No. 2008-04, Order Granting Applicant's Motion for Protective Order and Approving Procedure for Treatment of Confidential, Commercial, or Financial Information, (November 4, 2008) [hereinafter "GRP Confidentiality Order"]; *Re: Community Energy, Inc. and Lempster Wind, L.L.C. Application for Certificate of Site and Facility for the Lempster Mountain Wind Power Project, Lempster, Sullivan County, New Hampshire*, SEC Docket No. 2006-01, Order Granting Applicant's Motion For Protective Order/Confidential Treatment, (October 17, 2006) [hereinafter "Lempster Confidentiality Order"]. Accordingly, the Committee should treat the enclosed information in a similar manner.

7. For the reasons discussed herein, AWE respectfully requests that the Committee issue a protective order similar to the *GRP Confidentiality Order* and the

Lempster Confidentiality Order. These Orders make clear that confidential documents are available only to parties to this proceeding who have executed the confidentiality agreement attached hereto as Appendix A and solely for the purpose of participation in the above-captioned proceeding.

8. Because future requests for confidential information may arise in this proceeding, AWE respectfully requests that the Committee order that the procedures established by it in response to this motion will apply to future confidentiality requests.

As provided in the above-referenced *Lempster Confidentiality Order* and the *GRP*

Confidentiality Order, AWE requests that the Order contain the following provisions:

If a party desires to view the confidential information, said party will execute a protective agreement in the form set forth in Appendix A and forward copies of the agreement to the Applicant and the Sub-Committee. Only parties authorized by the Sub-Committee, after receipt of the executed protective agreement, shall be afforded access to the confidential information. The parties shall not make any copies of such information or use the information for purposes other than the preparation for and conduct of the proceedings in this docket.

Unless otherwise ordered, the parties shall not reference the confidential information during public proceedings in this docket or at any time in public. Unless otherwise ordered, upon completion of this proceeding and any resulting appeals, the Parties shall destroy any notes referencing the confidential information and return all confidential information to the Applicant. Within sixty days after the completion of this proceeding, or any resulting appeal, each Party shall certify to the Applicant that said notes have been destroyed and all confidential information returned. The rights of the Parties under this Order are not assignable and may not be transferred in any manner.

GRP Confidentiality Order at 2-3.

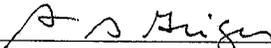
9. Because, as of this time, there are no other parties to the above-captioned docket, it is unknown whether there will be any concurrence(s) with or objection(s) to the within motion. See N.H. Admin. Rule Site 202.14 (d) and (e).

WHEREFORE, AWE respectfully requests that this Committee:

- A. Issue a protective order as requested herein that preserves the confidentiality of the document that is the subject of this Motion as well as other documents for which AWE requests, and the Committee agrees, should be accorded confidential treatment; and
- B. Grant such further relief as it deems appropriate.

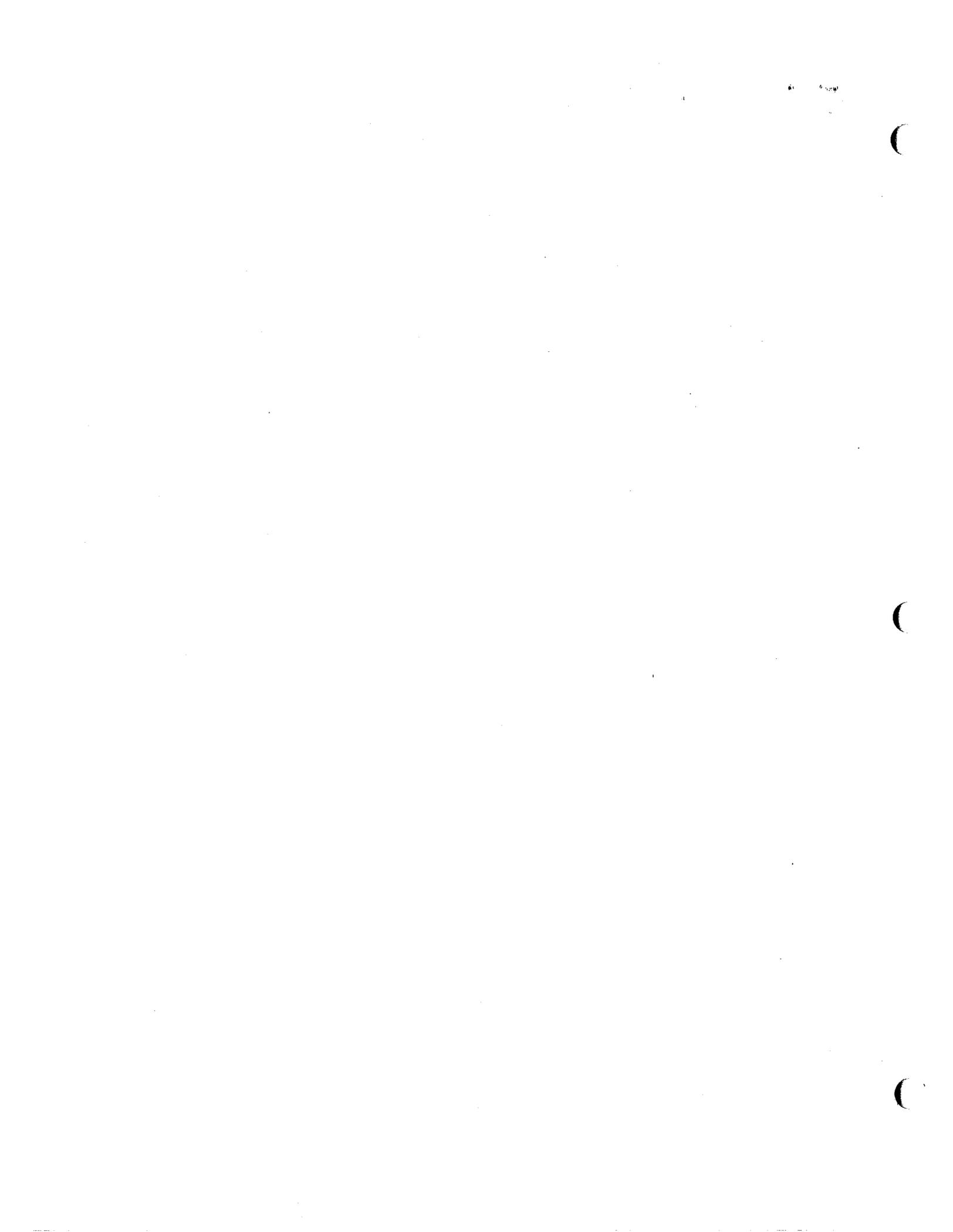
Respectfully submitted,

Antrim Wind Energy, LLC
By their attorneys,
ORR & RENO, P.A.
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550

By: 
Susan S. Geiger
Telephone: (603) 223-9154
Email: sgeiger@orr-reno.com

January 31, 2012

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APPENDIX A

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2012-___

APPLICATION OF ANTRIM WIND ENERGY, LLC
FOR A CERTIFICATE OF SITE AND FACILITY

I, _____, hereby certify that I am party to the above-captioned proceeding and in connection with my interests therein, I request that I be given access to the following Confidential Information maintained by the Site Evaluation Committee: _____. I further certify that I have read the Site Evaluation Committee's protective order issued in the above-captioned matter, understand it and agree to be bound by it. I understand that this Appendix A does not authorize my access to the above Confidential Information until I have signed and delivered it to counsel for Antrim Wind Energy, LLC and until it has been provided to the Site Evaluation Committee by said counsel.

Date

Signature of Party to Docket No. 2012-___

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