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July 2, 2012

Via Hand Delivery and Electronic Mail

Ms. Jane Murray, Secretary
New Hampshire Site Evaluation Committee
N.H. Department of Environmental Services
29 Hazen Drive
Concord, NH 03302-0095

***Re: Docket 2012-01 - Application of Antrim Wind Energy, LLC
for a Certificate of Site and Facility for a Renewable Energy Facility***

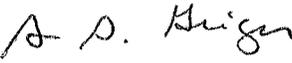
Dear Ms. Murray:

Enclosed for filing with the New Hampshire Site Evaluation Committee in the above-captioned matter please find an original and 9 copies of Applicant's Objection to Industrial Wind Action Group's Motion to Compel Responses to Data Requests.

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

Lawrence A. Kelly
(Of Counsel)

Very truly yours,


Susan S. Geiger

Enclosures

cc: Service List, excluding Committee Members
Clark A. Craig, Jr. (by first class mail)

898214_1

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

Docket No. 2012-01

Re: Antrim Wind Energy, LLC

**APPLICANT'S OBJECTION TO
INDUSTRIAL WIND ACTION GROUP'S
MOTION TO COMPEL RESPONSES TO DATA REQUESTS**

NOW COMES Antrim Wind Energy, LLC ("AWE" or "the Applicant"), by and through its undersigned attorneys, and objects to the Motion to Compel filed by Industrial Wind Action Group ("IWAG") by stating as follows:

1. In its Motion to Compel, IWAG requests that the Site Evaluation Committee ("the Committee") compel the Applicant to deliver information requested by IWAG in its data requests numbered 13, 14 and 15. The Motion also seeks clarification from the Committee that confidential documents filed with the Committee subject to a protective order be sent as e-mail attachments to parties who have executed a protective agreement. AWE objects to all of these requests.

IWAG Data Requests 13 and 14

2. IWAG data request 13 seeks spreadsheets and quotes containing expected capital expenditures and labor estimates for the Antrim Wind project, and IWAG data request 14 seeks the project's proforma information. Without explaining why, IWAG asserts that this information is relevant to this proceeding. IWAG also states that it needs access to the information "to fully and fairly present its case to the Committee." Motion

to Compel, ¶ 7. For the following reasons, AWE objects to providing this information to IWAG or to any other party except Counsel for the Public.

A. First, the requested financial information is irrelevant to the issue of whether the Applicant will have the financial capabilities required by RSA 162-H:16, IV. The Presiding Officer in this docket has correctly determined that the “important” or relevant question in this regard is not what assets the Applicant owns today, but rather, the Applicant’s “near-term prospect for project financing.” *Re: Application of Antrim Wind Energy, LLC*, Order on Unassented-to Motion for Protective Order and Confidential Treatment (June 4, 2012) at 3-4. Thus, inasmuch as the Motion to Compel seeks information that is not directly related to the issue of the Applicant’s near-term prospect for project financing, it should be denied, as such information would be excludable from the record of this proceeding. *See* RSA 541-A:33, II (presiding officer authorized to exclude irrelevant and immaterial evidence).

B. The requested information is competitively sensitive, proprietary commercial and financial information that AWE maintains as privileged and confidential, and does not publicly disclose. Competitive generators safeguard this type of information, and those who are not publicly traded (such as AWE) do not disclose it 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. Disclosure of this information to the general public, competitors of AWE or to parties whose interests, competitive and otherwise, are adverse to AWE’s would have a materially adverse effect on AWE. Given that IWAG is an outspoken advocate against the wind industry, disclosure of the

requested information to IWAG – even under a protective order - poses a great risk to AWE and other wind developers.

C. This Committee has previously determined that financial information of a non-publicly held applicant for a certificate of site and facility need not be disclosed to the public **or to other parties**, except for Counsel for the Public, due to his important statutory role pursuant to RSA 162-H:9. *See Application of Groton Wind, LLC*, SEC Docket No. 2010-01, Order on Pending Motions and Further Procedural Order (Dec. 14, 2010) at 2. The Committee reached this result after applying the three-pronged analysis in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005) to determine whether information is exempt from public disclosure under RSA 91-A, IV.

D. Applying the *Lambert/Lamy* analysis to the instant data requests compels the same result as the *Groton Wind* order: 1) The Applicant has identified a privacy interest in the information as demonstrated in paragraph 2. B, above. 2) There is no public interest in disclosure of this information, because as noted above, the Committee need not rely on this information to support a finding of financial capability. 3) Lastly, even assuming, *arguendo*, that there is a public interest in disclosure of this information, that interest is greatly outweighed by AWE's privacy interests in non-disclosure as described above.

4. In view of the foregoing, AWE should not be compelled to provide IWAG or any other party, except Counsel for the Public, with the information requested in IWAG data requests 13 and 14. This Committee has recognized that Counsel for the Public has an important statutory role in this proceeding and that his full and vigorous participation

is necessary to insure that the goals of RSA 162-H are met. *See Re: Application of Antrim Wind Energy, LLC*, Order on Unassented-to Motion for Protective Order and Confidential Treatment (June 4, 2012) at 4. Thus, inasmuch as the Applicant is willing to provide Counsel for the Public, subject to a protective order, with the information that IWAG requests, and given Counsel for the Public's important statutory role in the instant proceeding, IWAG does not need this sensitive information to "present its case." IWAG's Motion to Compel responses to data requests 13 and 14 should, therefore, be denied.

IWAG Data Request 15

5. IWAG data request 15 seeks the names of the utilities or entities with whom AWE is negotiating a power purchase agreement ("PPA"), as well as the dollar amounts per kWh under consideration. This request should be denied because information relating to the negotiation of a PPA is not discoverable. *See Public Service Company of New Hampshire*, 95 NH PUC 579, 589 (2010) (motion to compel information related to PPA negotiations denied; Public Utilities Commission could conceive of no circumstances in which such negotiation information would be deemed admissible.) In addition, this information is irrelevant to the issue of the Applicant's financial capabilities, as explained above. Lastly, given that this request seeks information about confidential commercial transaction negotiations, disclosure would harm not only AWE but the parties with whom it is negotiating. Thus, given that under the *Lambert/Lamy* analysis, the harm of disclosure outweighs the public's interest in disclosure, the Applicant should not be compelled to provide this information.

IWAG Request for Clarification

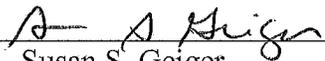
6. IWAG's Motion to Compel requests that the Committee clarify that confidential documents on file with the Committee can be sent as e-mail attachments to parties who have executed a protective agreement. The Applicant disagrees with this position and therefore objects to the Motion. A careful reading of the wording of the Presiding Officer's June 4, 2012 Order on Unassented-To Motion for Protective Order and Confidential Treatment reveals that confidential information may be "disclosed" to Counsel for the Public without execution of a confidentiality agreement. However, the Order does not indicate that the Applicant must directly disclose, e-mail or otherwise affirmatively provide parties with confidential documents on file with the Committee. Instead, the order states that parties other than Counsel for the Public may "obtain access to" or "seek to review" the Applicant's balance sheet if they sign the confidentiality agreement attached to the order and agree to abide by its terms and conditions. A reasonable and appropriate interpretation of the Order is that the confidential information filed with the Committee under seal may be reviewed at the Committee's offices. This process will insure that the information is securely maintained; e-mail delivery does not provide the same level of security. The risk of improper disclosure – inadvertent or intentional- is much greater with e-mail. For example, it is unknown whether parties share e-mail accounts with others, allow other persons to access their e-mail, or whether others are able to access the parties' e-mail documents without the parties' knowledge. Thus, in order to insure that confidential information submitted to the Committee is protected from public disclosure, IWAG's request for clarification should be denied.

7. If the Committee believes that clarification of its June 4, 2012 confidentiality order is needed, the Applicant respectfully requests that the Committee clarify the order to indicate that confidential information submitted to the Committee subject to a protective order may only be accessed at the Committee's offices by parties who have executed an appropriate confidentiality agreement that has been provided to AWE's counsel and to the Committee, and that the Applicant is not required to deliver such information to the parties (with the exception of Counsel for the Public) by electronic mail.

WHEREFORE, the Applicant respectfully requests that the Committee:

- A. Deny IWAG's Motion to Compel; and
- B. If necessary, clarify its June 4, 2012 order as indicated above; and
- C. Grant such further relief as deemed appropriate.

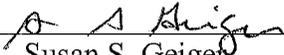
Respectfully submitted,
Antrim Wind Energy, LLC
By its Attorneys,
Orr and Reno, P.A.

By: 
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Concord, NH 03302-3550
603-223-9154
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Dated: July 2, 2012

Certificate of Service

I hereby certify that on this 2nd day of July, 2012, a copy of the foregoing Objection was sent by electronic mail or U.S. Mail, postage prepaid, to persons named on the Service List of this docket, excluding Committee Members.



Susan S. Geiger

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