

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2012-01

Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility for a Renewable Energy Facility proposed to be located in the Town of Antrim, County of Hillsborough and State of NH.

Intervenor pre-filed testimony by Robert L. Edwards due on or before the close of business on July 31, 2012.

Intervenor was approved for Intervenor Status based on information submitted on April 30, 2012 and is presently on file with the NHSEC.

Intervenor: Robert L. Edwards
101 Turner Hill Road
Antrim, New Hampshire 03440

Co-Intervenor
Mary E. Allen
21 Summer St.
Antrim, New Hampshire 03440

Question:

Should Antrim Wind Energy, LLC (AWE) or its successor(s), be unable to meet its financial payment schedule as defined in the recently signed PILOT and Alternative PILOT with the Town of Antrim, how is the Town protected against said potential payment default so that the Town does not experience a major cash flow interruption that causes financial pressures to its own operating budget or its required payments to the ConVal Cooperative School District and Hillsborough County?

Answer:

Since this Intervenor has not been provided with financial information regarding AWE and knowing that AWE is a shell LLC funded by its other non-guarantying member(s), I must assume that a potential material financial risk exists to the Town of Antrim should payment default occur caused by an operating loss, a bankruptcy filing or should the Facility cease to operate. A bankruptcy action potentially could require an extended period of time to resolve, especially if it took the form of a Chapter 11 reorganization bankruptcy. The Agreement allows for a two year period for Decommissioning of the Facility during which time the Town of Antrim would continue to be responsible for increased payments to the ConVal School District and Hillsborough County resulting from the higher valuation caused by AWE's facility. The Irrevocable Letter of Credit discussed in the Agreement is restricted to Decommissioning expense, not payment default. I would encourage the SEC to require AWE to establish a non-expiring payment default Irrevocable Letter of Credit (IRLOC) in favor of the Town of Antrim for and during the term of AWE's Contract with the Town and in an amount equal to no less than two annual payments averaged on the Initial PILOT and Alternative PILOT's first and last years scheduled payments. The form and structure of the IRLOC must be acceptable to the Select Board.

Question:

If Antrim Wind Energy, LLC (AWE) or its successors, are unable to meet its financial obligations under their lease agreements with the individual property owner's, who may specifically depend on said lease payment to meet its Ad Valorem tax payment to the Town of Antrim for the portion of taxes resulting from increased assessed value directly related to the wind turbine structures and/or other physical improvements resulting from construction of the Wind Farm so-called, how is that financial risk mitigated so as not to cause an undue financial burden to the landowner and the Town of Antrim?

Answer:

In the absence of knowing AWE financial condition, as an Intervenor I must assume that should a payment default under the initial PILOT Agreement or the Alternative PILOT Agreement occur with the Town of Antrim then it is reasonable to assume a similar default will occur in the Lease Agreement(s) payments with the individual property owners as well. To mitigate that risk, an Irrevocable Letter of Credit should be established to protect the Town against the property owner defaulting on its real estate taxes for the portion being supported by the individual Leases with AWE. A minimum of two year lease payments based on the first and last year's lease payments as disclosed in the Lease should be established as a condition of SEC approval.

Question:

Why does the Decommissioning Irrevocable Letter of Credit or Bond intended to provide the Town with adequate funding assurance require a minimum credit rating of "BBB" from Standard and Poor's which indicates that with adverse economic conditions or changing circumstances are more likely to lead to a weakening capacity to meet its financial commitments or "Ba" from Moody's each defined on the Effective Date or their commercial equivalent?

Answer:

The Select Board is unaware that Letters of Credit are normally issued by financial institutions that may or may not be rated. They are further unaware that if a performance bond is provided by an insurance company, the industry's customary rating system measuring its financial capability to honor its commitment is measured by A.M. Best, not Standard and Poor's or Moody's. At the very least, the Standard and Poor's rating of Investment Grade issues should have been a minimum of AA, not BBB. The Select Board's selection of Letter of Credit and Bonding financial performance standards are common when measuring the entity as a financial investment not as a standard for measuring their financial capability to honor their commitment in the event the Letter of Credit or Bond is called by the Town of Antrim due to a default by AWE. In the event of SEC approval of the proposed Project, it is recommended that the SEC allow the Select Board to have the sole authority to accept or reject AWE's or its successors' presented Letters of Credit that the Select Board feel are unsatisfactory as to the issuer, its structure, maturity and dollars amount. In addition, I would ask the SEC to allow the Select Board to require that performance bonding be issued by an insurance company that demonstrates a minimum A.M. Best Rating of B+ and is acceptable to the Select Board as to structure, maturity and dollar amount.

Question:

The Agreement and the PILOT documents required signatures of AWE, indicate that two executive officers are required to sign the Agreement but only one required to sign the Alternative PILOT document. Should the required signatures be consistent and signed by

Members rather than Executive Officers? Were the required corporate votes received by the Town of Antrim authorizing and empowering the Executive Officer(s) to execute all contractual documents between AWE and the Town of Antrim? Does this inconsistency cause any enforceability issues for the Town of Antrim in the event of default?

Answer:

Although raised by this Intervenor multiple times, verbally and in writing, it is my understanding as of this writing that nothing was changed. When Town Council was asked at the final public meeting held on the PILOT Agreement, Attorney Upton stated that no corporate resolution was received when the Agreement dated March 8, 2012 was executed by all parties. This oversight leads this Intervenor to be concerned regarding future enforceability. I would ask the SEC to ensure that all required legal documentation be properly completed and confirmed as a condition of approval.

Question:

Multiple public meetings were held by the Select Board with Town Council present to allow material input from the public both on the Agreement and the Initial and Alternative PILOT Payment Agreements. Were the questions disclosed in your pre-filed testimony dated 7-31-2012 addressed at those meetings?

Answer:

Yes, prior the meeting a written outline clearly defining concerns and offering suggestions was presented for Select Board consideration along with a request to delay signing until the Select Board and Town Council could review and discuss the presented comments, concerns and suggestions. This would allow time to modify any language they felt would improve the text on behalf of the Town of Antrim and its taxpayers.

Question:

Did the Select Board take additional time to consider whether they or Town Council felt that written and verbal comments had sufficient merit to warrant a delayed signing of the Agreement or the Initial and Alternative PILOT agreements? Was there any statutory timing or legal constraints that made it imperative that these documents be signed in haste?

Answer:

At the final public meetings, the Select Board accepted comments, both verbally and written, and announced they welcomed the public's comment but expressed that they wanted to get the Agreement signed that evening which delivered the message to this Intervenor that little or no additional consideration would be given to comments, written or verbal, at the various final public meetings.

In terms of the Agreement between AWE and the Town of Antrim, a Select Board member verbally expressed to this Intervenor that they wanted to execute the Agreement before the scheduled vote on zoning articles were to be voted on in March. Consequently, the Agreement was executed on March 8, 2012.

At the final public meeting to hear comment on the Initial and Alternative PILOT Agreements, a member of the Select Board expressed his unwillingness to sign the PILOT that evening and

along with other some community members expressing their willingness to take a small amount of additional time to review the presented comments. Although Select Board Member Mike Genest confirmed there were some good points made in the written comments, the vote to sign the PILOT documents was in the affirmative by a 2-1 Select Board Vote and signed on 6/20/2012, immediately after the final public meeting was concluded. This precluded any opportunity to enhance the terms identified above in what I view as important to the taxpayers of the Town of Antrim.

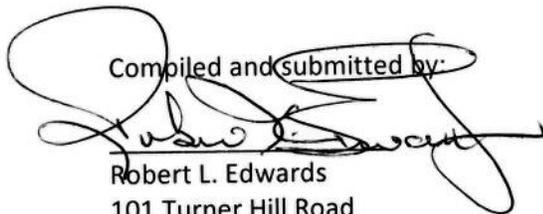
Question:

Does this conclude your Testimony?

Answer:

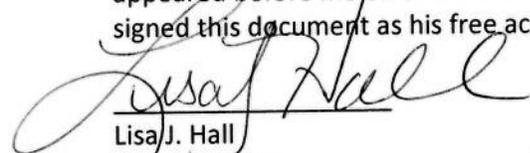
Yes

Compiled and submitted by:



Robert L. Edwards
101 Turner Hill Road
Antrim, New Hampshire 03440

I hereby attest that Robert L. Edwards of 101 Turner Hill Road, Antrim, NH 03440 personally appeared before me on this the 31st day of July, 2012 and represented that he prepared and signed this document as his free act and deed.



Lisa J. Hall
Notary Public
State of New Hampshire
County of Hillsborough

