

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Concerning an Application for a Certificate of Site and Facility
Antrim Wind Energy LLC
Docket No. 2012-01

OBJECTION OF THREE INTERVENOR GROUPS

Edwards-Allen Joint Intervenors
North Branch Resident Intervenors
Abutters' Group Intervenors

to

**APPLICANT'S MOTION FOR REHEARING
AND
MOTION TO REOPEN THE RECORD**

Three Intervenor groupings, as recognized by the New Hampshire Site Evaluation Committee ("SEC") in SEC Docket 2012-01, jointly submit this objection to the Applicant's Motion for Rehearing And Motion to Reopen the Record. The Intervenors joining in this action are all residents and voters in the Town of Antrim and are described as follows:

1. Edwards-Allen Joint Intervenors: (Robert L. Edwards and Mary E. Allen)
2. North Branch Resident Intervenors: (Richard and Lorraine Carey Block; Annie Law; Robert A. Cleland; Elsa Voelcker; James Hankard; Samuel E. and Michele D. Apkarian)
3. Abutter's Group Intervenors (Janice Longgood; Mark J., Brenda and Nathan Schaefer; Clark Craig Jr.)

The Intervenors, so described, argue that the Applicant's Motion for Rehearing should be denied for these reasons: (1) The Applicant's claim that the

SEC proceedings were “neither predictable nor fair” is unfounded and their expectation that this case should have been decided exactly like the three previous applications ignores the SEC’s obligation and right to act independently and responsibly when determining the merit of an application; (2) The Applicant’s insistence that their project proposal presents concerns that are “virtually indistinguishable” from the previous projects denies the many dissimilar facts and details of their proposed installation and its setting; (3) The Applicant’s allegation of “new standards” being applied retroactively and various issues being “ignored” by the SEC is inaccurate, relying on misrepresentation and/or misinterpretation of the hearing and deliberation proceedings; (4) The Applicant’s representation of the SEC’s decision as “granting veto power over the Project to a small group of citizens opposed to any wind project in Antrim despite the overwhelming support for the Project in the general population of Antrim” is not logical, defies reason, and is based on false and/or unsubstantiated information; (5) The Applicant’s touting of their conservation and purported mitigation measures as “significant and unprecedented” overrates their efforts and exaggerates the potential benefits of the project; and, (6) The charge that the SEC was unlawful in failing to rule on the Applicant’s financial capability is unjustified in light of their continued failure to prove such capability.

Additionally, the Intervenors argue that the Applicant’s Motion to Reopen the Record should be denied because the “new” mitigation information submitted is not significant and the additional financial institution letters have no value and do not add any substantial evidence to the record of Antrim Wind’s financial capability.

Argument

1) The Applicant’s claim that the SEC proceedings were “neither predictable nor fair” is unfounded and their expectation that this case should have been decided exactly like the three previous applications ignores the SEC’s obligation and right to act independently and responsibly when determining the merit of an application.

The SEC is bound by RSA 162-H to examine and rule on each application on its own merits. There has never been any guarantee that a project before the SEC will be approved, regardless of how the application is presented.

The Applicants are the authors of their own predicament. They have known from the very beginning that there was significant objection to the project, that it was not a permitted use within Antrim's Zoning Ordinance, yet they have continually increased the scope of the proposal.

The choice to apply to the SEC for a site permit was a business decision and comments about the costs of application should be disregarded. Money spent has nothing to do with the merits of the proposed project. The possibility of failure of the project to become certificated was a business risk that the Applicants should have accepted from the onset.

Taken to the extreme, the Applicant's argument of the SEC needing to rule consistently with prior application deliberations would result in the process becoming a "rubber stamp" with no value. Each project is unique, with its own characteristics and context. The SEC is not bound to issue the same findings in every case.

(2) The Applicant's insistence that their project proposal presents concerns that are "virtually indistinguishable" from the previous projects denies the many dissimilar facts and details of their proposed installation and its setting.

The Applicant fails to consider the differences in this project by calling it virtually indistinguishable from the three previous projects. This ignores the fact that the proposed turbines would be approximately 100 feet or 25% taller than any of the existing projects: "these are significantly higher" [*Deliberations; Day Three Afternoon, page 52.*]

During deliberations, Chairman Ignatius discussed the difference in the impact of this proposal and that of the previous projects:

“...I really consider this a question of scale and context, how this project affects the reality of what the community of Antrim is. And it’s very different from thinking about the ridgeline in Lempster and the development in Granite Reliable up in the White Mountain, and even the Groton ridgelines, where far more of it is isolated and is away from kind of the heart of the community. There’s certainly people impacted, at least in Groton and Lempster. But in Lempster, far less so. And when you think about Granite Reliable, you know, that’s really so remote, that most of the impact is on the natural wildlife than any humans.” *[Deliberations; Day Three Afternoon, page 21-22]*

The comparison of the Lempster project’s relationship to Pillsbury State Park and Antrim Wind’s relationship to Willard Pond is erroneous, specifically since the distance from the Lempster turbines to Pillsbury is four times that of the distance of AWE’s proposed turbines to Willard Pond (2 miles vs. a half mile).

The Applicant argues that the Committee’s decision was “inconsistent” with the permitting of past projects, yet the Committee conscientiously pointed out that each project is different and that this project, as proposed, was simply out of scale with the setting and area.

(3) The Applicant’s allegation of “new standards” being applied retroactively and various issues being “ignored” by the SEC is inaccurate, relying on misrepresentation and/or misinterpretation of the hearing and deliberation proceedings.

The SEC does not make laws or set standards. There are only three prior cases for precedent. Consistent guidelines were considered in each case. Since a different decision was made, this does not mean that the standards have changed, just that this case resulted in a different outcome due to differences in this case from the previous projects.

The allegations that the SEC never considered the regional aesthetic impact of the project are simply false. Throughout the deliberations, numerous statements were made that the SEC’s concerns for aesthetic impact of the proposed project carried far beyond Audubon’s Willard Pond Sanctuary. Chairman Ignatius stated,

“Willard Pond was one of the areas discussed by some Committee members, but not the only area. And I think it’s important that as we think about whether there’s anything that could be done as a condition, that we not lose sight of the fact that it isn’t just Willard Pond...” *[Deliberations; Day Three Afternoon, page 16.]* Dr. Boisvert added, “I look at it not just from Willard Pond, but from the other directions, literally. It’s going to be seen from a lot of places. And mitigating it from one direction wouldn’t necessarily mitigate it from the others. And I’m not quite sure I’m ready to say one view or one area is more important than another...”

[Deliberations; Day Three Afternoon, page 20-21.] Chairman Ignatius continued with:

“Here, just because of the way the ridges are and the way the community development is, it seems like you’ve got some key locations that are part of the heart of Antrim that are very much affected. You’ve got the Willard Pond that we’ve talked about quite a lot that’s a very special place within the people of Antrim, held dearly, but also within the region. And you have things like Gregg Lake, that’s sort of a community gathering/recreation area, you know, picnicking and swimming and boating and town soccer fields and all that sort of thing. And those towers just are going to ring around and hang over that area.” *[Deliberations; Day Three Afternoon, page 22]*

The Applicant argues that the Committee “overlooked” evidence that shows that the project would not be visible from 95 percent of the area within a 10-mile radius. In fact, the Committee thoroughly considered extensive testimonies that disproved this claim. Notwithstanding this, a quick review of the 10-mile radius map shows that 14 lakes or ponds – listed here with the town(s) where they are located – will have a visual impact from the turbines. All are reported to have some lakeshore development and all are well known and appreciated by tourists, campers, and local residents for their recreational uses:

- Gregg Lake (Antrim)
- Willard Pond (Antrim)
- Franklin Pierce Lake (Antrim/Hillsborough)
- Black Pond (Windsor)
- Loon Pond (Hillsborough)
- Gould Pond (Hillsborough)
- Deering Reservoir (Deering)

- Powder Mill Pond (Bennington/Hancock/Greenfield)
- Nubanusit Lake (Hancock/Nelson)
- Spoonwood Pond (Hancock/Nelson)
- Island Pond (Stoddard)
- Robb Reservoir (Stoddard)
- Rye Pond (Stoddard/Antrim/Nelson)
- Highland Lake (Stoddard/Washington)

The Applicant's Motion claims that "the Subcommittee has apparently ignored the fact that without the Project, this area could be subdivided into three acre house lots under current Antrim zoning regulations." This is not accurate.

During the deliberations, Mr. Simpkins discussed this:

"As far as what could happen on the ridge top, I think that's a valid point. But also, I don't see, you know, the entire ridge top becoming a sea of houses, because they'd have to go through local planning. And I think we've heard a lot from the towns here, the select board, the planning board, the conservation commission. You know, they've been planning for decades. I think they have a very good system down. So I don't think it would be something where all of a sudden you're going to see unlimited building, because it would still have to go through subdivision and all the other town processes. And, you know, they would look at that as far what's appropriate. Also, even with houses, they're most likely not going to be 500 feet tall."
[Deliberations; Day Three Afternoon, pages 35-36]

The Applicant's declaration that "Willard Pond is actually an artificial impoundment" is absolutely untrue. The *New Hampshire Official List of Public Waters* published by the New Hampshire Department of Environmental Services Water Division lists Willard Pond as a naturally occurring lake¹ and the U.S. Geological Survey Geographic Names Information System classifies it as a "Lake," defined as a "natural body of inland water."² Furthermore, the "busy parking lot" is hidden approximately two tenths of a mile away, purposefully situated to keep parked vehicles away from the pond itself.

The claim that nothing in the record shows that turbines around Willard Pond will affect the experience of visitors is also inaccurate. In his Prefiled

¹ <http://des.nh.gov/organization/commissioner/pip/publications/wd/documents/olpw.pdf>

² http://geonames.usgs.gov/pls/gnispublic/f?p=gnispq:3::NO::P3_FID:870907

Testimony of July 31, 2012, Phil Brown states: “Many of the fishermen I spoke to that morning expressed their unsolicited opinions of how the proposed wind facility would negatively affect their fishing experience here.”

The immediate visual impact to a nature sanctuary and natural pond, which has been protected by an intricate blanket of preservation effort, as well as the over-all visibility of the project in an area that has been called the Currier and Ives corner of New Hampshire would be profound and cannot be dismissed.

(4) The Applicant’s representation of the SEC’s decision as “granting veto power over the Project to a small group of citizens opposed to any wind project in Antrim despite the overwhelming support for the Project in the general population of Antrim” is not logical, defies reason, and is based on false and/or unsubstantiated information.

The decision whether or not to issue a certificate lies solely in the hands of the SEC. Their deliberations clearly demonstrated a conscientious consideration of many factors, but little or no mention was made of any “small group of citizens” and certainly no weight was given to any speculative “veto” that might be cast by anyone from Antrim if that imaginary power was available.

The Applicant’s claim that they have “overwhelming support for the Project in the general population of Antrim” is based on conjecture and personal opinions without evidence to back this up. There has never been an unbiased, scientifically based poll of Antrim citizens, nor has there ever been a town-wide referendum or even a public forum to discuss the pros and cons of an industrial wind project in town.

The fact that not one group of citizens in favor of the project applied for Intervenor status underscores the uncertainty of a significant number of wind project supporters in Antrim. However, there were many citizen Intervenors opposed to the project. The only Intervenor group in support were the Selectmen,

passive participants who didn't testify, question witnesses, or make themselves available for cross-examination.

(5) The Applicant's touting of their conservation and purported mitigation measures as "significant and unprecedented" overrates their efforts and exaggerates the potential benefits of the project.

The applicant's contention that "the Decision fails to recognize that the Project's significant and long-term land conservation components (which will ensure permanent conservation of the ridgeline overlooking Willard Pond even after the Project is decommissioned) will complement and enhance the above-referenced conservation efforts" and that "100% of the ridgeline would be conserved permanently (i.e. in perpetuity even after the Project is decommissioned)," is without merit, especially in view of the fact that the significance of AWE's conservation efforts is overrated. Even if the land around the project could be restored to some form of undeveloped state after the useful life of the turbines, eradicating the aesthetic and recreational assets of the Tuttle Hill/Willard Mountain ridge and the region surrounding it for 50 years, or an entire generation, is reprehensible.

The Applicants' claim that the SEC "ignores that none of the other wind projects certificated by the SEC have made a commitment to use a radar activated lighting system" is also disingenuous, since the Motion fails to mention that AWE, after an early promise to the Town to use radar activated lighting, dropped it from their plans until pressed to do so by the AMC. This is also a misleading claim since the radar activated lighting technology is still in the testing stage and not yet authorized by the FAA and thus the previous projects were all approved prior to its availability.

The Applicant claims, as grounds for rehearing, "an agreement with the Town of Antrim regarding a compensation plan for addressing perceived visual impacts to Gregg Lake, an agreement that the Town has indicated is 'full and acceptable

compensation for any perceived visual impacts to the Gregg Lake Area.” This is misleading; the agreement is **only** between AWE and the Selectmen, since the overwhelming public input at two hearings which was strongly against the signing of this was ignored by the Selectmen. It is also deceptive since the agreement claims the payment is “compensation for any perceived visual impacts created by the Antrim Wind Project upon the Gregg Lake **area**” [emphasis added], yet the payment is specified as “to be used for enhancement of the recreational activities and aesthetic experience **at the Gregg Lake Recreational Area**” [emphasis added], a 3.3-acre town beach, ignoring the impact of the project on the rest of the 195-acre lake, including more than 40 lakeshore homes, a large Girl Scout camp and the lakeshore community known as White Birch Point, which has recently been determined eligible for listing on the National Register of Historic Places.

(6) The charge that the SEC was unlawful in failing to rule on the Applicant’s financial capability is unjustified in light of their failure to prove such capability.

A) Antrim Wind Energy LLC offered testimony during the SEC hearings (and Committee members considered that testimony), which indicated neither Antrim Wind Energy nor its parent companies would finance the cost of constructing this project using their own resources. *[Testimony, 10/31/12, a.m. pg. 37, 10:18; Deliberations, Day One, pg. 73:24 to pg 74:9]* To clear the bar for financial capability, Antrim Wind Energy needed to demonstrate significant success in securing commitments from investors, banks or other lenders willing to finance a \$61-million wind energy facility.

During deliberations, the SEC closely examined the financial capability of Antrim Wind Energy as measured in its efforts to secure construction financing and efforts to secure a power purchase agreement (“PPA”), which would help attract investors *[Deliberations; Day One Morning; pg. 72:7 to pg. 76:13]*. During that examination, the SEC found that Antrim Wind Energy was not able to demonstrate

any commitments for financing from any investors, bank or other lender. *[Deliberations; Day One Morning; pg. 96:16-24; pg 97:1-11]*. Likewise, although Antrim Wind had mentioned in testimony that it had received an e-mail from a Rhode Island utility responding to its request for pursuing a PPA, no documentation of that exchange, or any further development, was entered into the record *[Deliberations; Day One Morning; pg 72:22, to pg 73:7]*.

It should be noted that, during deliberations, SEC members took a preliminary and non-binding “straw” vote on Antrim Wind Energy’s financial capability as measured by its success in securing adequate financing and a PPA. The result was a 0-8 vote indicating that Antrim Wind Energy had not satisfied that requirement. *[Deliberations; Day One Morning; pg 109:10-23]*

The permit for site and facility ultimately failed on another standard (aesthetics). A final finding on financial capacity was moot at that point, but it is difficult to believe the outcome would have been different.

B) Antrim Wind Energy and its attorneys argue here that the SEC erred in confusing “applicant’s financial capability” with the “financial capacity of the Project.”

The SEC’s deliberations did not focus on whether this project would make or lose money for its investors or for Antrim Wind Energy. Such an examination would have constituted a weighing of the “financial capability of the Project.” There is no evidence the SEC considered that approach, nor should it have, since such an examination is outside its purview. Whether an energy project is profitable or not is determined by marketplace forces, and it is not the concern of those charged with upholding public policy.

Since this wind developer, as is set out in our argument in the previous section (A), does not intend to internally finance the project’s construction, then Antrim Wind Energy is responsible for finding investors willing to do so. This is how an “applicant’s financial capability” is measured when that applicant isn’t offering its own resources.

Antrim Wind Energy failed to meet this standard. It did not offer commitments for financing from any investors, from any bank, or from any other lender. It did not demonstrate solid interest from any party to enter a power purchase agreement. It did not offer a signed Operation and Management agreement. It did not offer a signed turbine supply agreement. And, correctly, members of the SEC were concerned about these missing factors. *[see citation in Section A for Day One, p. 96-7]*

And while the Deloitte report may have found Antrim Wind Energy's management team had the needed potential for handling financial negotiations, in fact, the management team failed to secure any of the needed financial commitments for this \$61 million project. And that failure must be seen as a failure to meet the bar for "financial capability."

C) In requesting a conditioned certificate of site and facility, Antrim Wind Energy attempted to present its financial situation as being similar to that faced by Granite Reliable at the close of its hearings. In that case, the firm's construction financing was not completely in place and the Committee imposed a condition prohibiting Granite Reliable from commencing construction until its financing package was complete.

This was not the situation facing Antrim Wind Energy at the end of the hearings, during the deliberation phase, or now.

None of the construction financing for Antrim Wind is in place and the firm has presented no evidence of commitments for financing from any investors, bank, or other lenders. Further there is not documented interest from any party to enter a Power Purchase Agreement. *[Deliberations; Day One Morning; pg. 96:16-24; pg 97:1-11]*

The SEC did not err when it found "the Applicant comes to the table without any substantial progress towards establishing any of the key conditions necessary to render the Applicant to be financially capable to construct and operate the Facility." *[Decision at 39]*. In fact the opposite is true, as granting a site and facility

permit, even a conditional one, without strong proof of how the project would be financed would have been extremely unreasonable and arbitrary.

7) The Intervenors argue that the Applicant’s Motion to Reopen the Record should be denied because the “new” mitigation information submitted is not significant and the additional financial institution letters have no value and do not add any substantial evidence to the record of Antrim Wind’s financial capability.

A) The potential removal of Turbine #10 does little to alter the overall visual impact of a project utilizing the tallest wind turbines in the northeast. It would have absolutely no effect on the impact of the project on Gregg Lake or the historic properties at White Birch Point. It is also unclear whether Antrim Wind has firmly decided to eliminate this turbine or whether they consider it a negotiable issue. Attachment G of the applicant’s Motion appears to indicate ten turbine clearings. A recent newspaper article³ quotes Antrim Selectman Gordon Webber: “They are saying they would like to keep all ten towers, but if giving up tower ten makes it so the SEC will hear their appeal then they would go without it.”

The last-minute addition of approximately 100 acres to the potential conservation easements likewise would have little effect on the overall mitigation offered by Antrim Wind. This proposed easement will contain a significant amount of disturbed terrain around four turbines and the project’s ridgeline road. Additionally, this part of their overall easement package should have been included in the original application with the rest of the land conservation proposal. The landowners of this parcel have requested the Town of Antrim to be the holder of this easement, and, since most New Hampshire easements are held by experienced land conservation organizations rather than municipalities, and there appears to be

³ “Wind could be downsized,” Hillsborough, NH *Villager*, June 7, 2013

significant public opinion against the Town taking on this burden, there could possibly be delays in the execution of this deed.

The cash offers of \$40,000 to the Town of Antrim and to NH Audubon (who, according to a newspaper interview⁴ had not been approached about this at the time Antrim Wind's Motion was submitted to the SEC) are a token effort to present the image that Antrim Wind is concerned about the overall visual impact of their project proposal. Neither grant would have any ability to effect compensatory actions for the presence of at least nine 500-foot turbines towering over Gregg Lake and Willard Pond. This new evidence of the post-decisional compensation agreement should be rejected as grounds for reopening and not allowed in the record because the issue of compensation for aesthetic harm was not previously litigated in this proceeding.

B) Antrim Wind Energy offers two letters from financial institutions [*AWE's Motion to Rehear/Reopen, Attachments H-1 and H-2*] with hopes that the Committee will reopen the record and consider these letters in evaluating adequate financial capability in accordance with RSA 162-H:16, IV (a).

The Committee should not reopen the record on the basis of these letters.

A review of both letters clearly confirms that Antrim Wind Energy cannot at this time provide any compelling evidence that they have secured financing. Further, the letters offer no evidence that Antrim Wind Energy even submitted a formal request for financing, with all the required supporting documentation, that would allow either financial entity to confirm that a completed application has been filed and accepted.

Letters from Bayern LB and KeyBank, N.A. clearly state that their letters must be considered as Letters of Interest only. Both institutions are very careful to ensure that the reader understand that their letters are for discussion purposes only and are not an offer of financing or any commitment on behalf of their respective

⁴ "Wind farm proposals in limbo," *Monadnock Ledger-Transcript*, June 6, 2013

financial institutions and further that they are not intended to be legally binding or give rise to any legal or fiduciary relationship.

KeyBank clearly sets forth the four assumptions and standards that Westerly Wind LLC through its affiliate, Antrim Wind Energy LLC, must meet to their sole satisfaction in order for a financing request to be considered.

In terms of Bayern LB's letter, paragraph four sets forth a clear description of the criteria that must be met to their satisfaction, including but not limited to, written confirmation of permanent take-out financing once the construction phase has been satisfactorily completed. Any permanent financing that is to be offered by any financial institution will include a requirement that the construction phase must be completed in accordance with all town, state and federal approvals, as may be required. Any non-compliance with the requirements of the construction phase will render permanent financing void.

The review of the minutes of the SEC's hearings will confirm that testimony was provided on behalf of Antrim Wind Energy that financing was not in place and will not even be applied for until a decision is reached by the SEC and only after careful consideration is given of all terms and conditions made part of the SEC's decision.

The previous concerns expressed by the SEC that acceptable evidence of Antrim Wind Energy's financing capability and commitment was not provided during the hearings remains valid today and the SEC must not be comforted by the Letters of Interest submitted by the Applicant as a reason to reconsider their previous decision.

Based on these submitted Letters of Interest, it is clear beyond any reasonable doubt that no commitment has been issued or implied to finance Antrim Wind Energy's proposed project at this time.

Conclusion

Antrim Wind Energy LLC has not presented sufficient evidence to warrant a rehearing. A review of the record of the 11 days of testimony and three days of deliberation clearly shows the SEC heard, discussed and thoroughly reviewed the evidence presented and assessed the potential aesthetic impacts of the proposed project.

The Committee must judge each and every application that comes before it on its own merits. Antrim Wind Energy's project is very different from others the Committee has assessed.

The applicant has not shown good cause for rehearing and its motion should be denied. The SEC's decision to deny a permit for site and facility should stand.

Further, Antrim Wind Energy LLC has not presented sufficient evidence to show a reopening of the record is warranted in this case.

WHEREFORE, for these reasons and for all the reasons outlined above, the Edwards-Allen Joint Intervenors, the North Branch Resident Intervenors, and the Abutters' Group Intervenors respectfully request that the SEC deny Antrim Wind Energy's Motion for Rehearing and their Motion to Reopen the Record.

Respectfully submitted,

Dated: June 13, 2013



Robert L. Edwards, Joint Intervenor with Allen



Mary E. Allen, Joint Intervenor with Edwards



Richard Block
spokesperson for North Branch Resident Intervenors



Janice Longgood
spokesperson for Abutters' Group Intervenors

Certificate of Service

I, Richard Block, certify that on June 13, 2013, I served a copy of the foregoing on the Parties and Intervenors, as identified on the official service list, by electronic mail.



Richard Block