

MCLANE MIDDLETON

BARRY NEEDLEMAN
Direct Dial: 603.230.4407
Email: barry.needleman@mclane.com
Admitted in NH, MA and ME
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

May 24, 2016

VIA ELECTRONIC MAIL & HAND-DELIVERY

New Hampshire Site Evaluation Committee
Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: NH Site Evaluation Committee Docket No. 2015-02:
Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility for
Construction of a Wind Project in Antrim New Hampshire**

Dear Ms. Monroe:

Please find enclosed for filing in the above-captioned matter, an original and one copy of Applicant's Objection to Wind Action Group, Lorraine Carey Block, and Richard Block's Motion to Expand the Schedule.

We have provided members of the distribution list with electronic copies of this Objection, pending addition of the document to the Committee's website.

Please contact me directly should you have any questions.

Sincerely,



Barry Needleman

BN:rs3

Enclosure

cc: Distribution List

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-02

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

**APPLICANT'S OBJECTION TO MOTION TO
EXPAND THE SCHEDULE**

NOW COMES Antrim Wind Energy, LLC ("AWE" or the "Applicant") by and through its attorneys, McLane Middleton, Professional Association, and respectfully submits this Objection to Wind Action Group and Lorraine Carey Block and Richard Block's (collectively referred to as the "Intervenors") Motion to Expand the Schedule (the "Motion").

I. Introduction

1. On October 2, 2015, the AWE filed an Application with the New Hampshire Site Evaluation Committee ("SEC" or the "Committee") for a Certificate of Site and Facility to construct and operate a 28.8 MW electric generation facility consisting of nine Siemens SWT-3.2-113 direct drive wind turbines in Antrim, New Hampshire (the "Project"). The Committee accepted the Application as administratively complete on December 1, 2015.

2. On December 16, 2015, the Committee readopted its administrative rules with amendments. The Applicant received a letter from the Committee dated December 28, 2015, pursuant to RSA 162-H:10, VII, requesting that the Applicant review the newly adopted rules and notify the Committee whether additional information was required for the Application to comply with the new rules.

3. The Applicant notified the Committee that supplemental information was required and timely provided the Committee with the additional information on February 19, 2016.

4. On March 10, 2016, the Intervenor filed a Motion arguing that certain portions of the Application were not in compliance with the recently amended rules. The Applicant objected to the Motion.

5. The Committee issued a procedural schedule on March 25, 2016. Discovery commenced thereafter.

6. During discovery, Counsel for the Public requested documents from the Applicant which the Applicant considered to be highly confidential (e.g. certain financial information, certain contract information, etc.). Wind Action Group (“WAG”) separately requested similar documents. The Applicant produced all the requested information to Counsel for the Public and asked that it be treated as confidential. The Applicant objected to producing the information to WAG arguing that, based on prior Committee orders, WAG was not entitled to have access to that highly confidential information.¹ The Applicant did work with WAG, prior to filing its objection and provided certain material in an effort to compromise.

7. The Applicant filed a Motion for Protective Order and Confidential Treatment on April 15, 2016. WAG filed an objection to the Applicant’s Motion on April 25, 2016.

8. The Intervenor has failed to assert any legitimate reason to justify a delay in the proceeding. The Committee’s failure to rule on the Intervenor’s March 10, 2016 Motion or schedule a second site visit in no way prohibit Parties from being able to comply with the procedural schedule.

¹ See e.g. *Applicant’s Motion for Protective Order and Confidential Treatment*, at fn 1, Docket 2015-02 (April 15, 2016) (Noting that the Committee has previously ruled with respect to business information, such as a pro forma, that the applicant only had to provide this confidential information “solely to Counsel for the Public pursuant to the terms of a protective order.” See *Order on Outstanding Motions*, Docket No. 2012-01, p. 4 (August 22, 2012); See also, *Order on Pending Motions and Further Procedural Order*, SEC Docket No. 2010-01, p. 2 (Dec, 14, 2010).

II. The Current Lack of a Ruling on the Intervenors' March 10, 2016 Motion Should Not Serve As A Basis For Extending The Schedule

9. The Intervenors March 10, 2016 Motion requested that the Committee reevaluate its December 1, 2015 decision deeming the Application administratively complete. The issues the Intervenors raised do not have any bearing on Application completeness. If anything, the arguments relate to the strength of the Applicant's case, including whether it has met its burden of proof. *See Applicant's Objection to Motion Requiring Portions of the Antrim Wind, LLC Application be Brought into Compliance*, Docket 2015-02 (March 18, 2016). As the Applicant noted in its objection to this motion, the proper place for Intervenors to raise this argument is in their testimony. *Id.* at 4-5.

10. Whatever substantive merit the Intervenors' arguments may have – and Applicants believe they have none – it is abundantly clear that delaying the process to address them is inappropriate and would unquestionably interfere with the orderly conduct of the proceeding.

III. The Status of the Applicant's Confidential Information Does Not Warrant Any Delay In the Proceeding

11. The Intervenors suggest that a delay in the proceeding is warranted because the Applicant has only provided certain confidential information to Counsel for the Public, and the Committee has not yet ruled on the Applicant's Confidentiality Motion pertaining to that information. As a procedural and substantive matter, the Intervenors' arguments are incorrect.

12. AWE provided certain highly confidential information to Counsel for the Public in response to data requests. The Applicant subsequently filed a Motion for Protective Order and Confidential Treatment to ensure that information would be protected if Counsel for the Public

or the Applicant wanted to enter it into the record at a later time. *See generally Applicant's Motion for Protective Order and Confidential Treatment*, Docket 2015-02 (April 15, 2016). In fact, the Applicant specifically stated in the Motion in footnote 1 that it was not seeking a determination at this time as to whether any other party was entitled to the information provided since no motion to compel had been filed. *Applicant's Motion for Protective Order and Confidential Treatment*, at fn 1, Docket 2015-02 (April 15, 2016).

13. The fact that the Committee has not yet ruled on that Motion has no bearing on the Intervenor's ability or obligation to file their testimony in a timely manner. In fact, WAG essentially admitted this point when it claimed that it is premature for the SEC to rule on Applicant's confidentiality Motion as "[n]o formal action has been taken by the Applicant or Counsel for the Public to move the Documents into the Docket's record. The motion should be rejected as premature." *See Objection of the Wind Action Group to Applicant's Partially Assented-to Motion for Protective Order and Confidential Treatment*, Docket 2015-02, p. 2 (April 25, 2016). WAG cannot have it both ways; arguing on the one hand that the Motion is premature and should therefore be rejected, but on the other hand assert that the Committee's failure thus far to rule on the Motion should be a cause for delay.

14. Procedurally, the Intervenor's Motion to Expand the Schedule also suffers from a fatal defect. Aside from Counsel for the Public, the only other party who requested the confidential information at issue during discovery was WAG. In response to that request, the Applicant objected. Prior to filing its formal objection to the request on April 11, 2016, the Applicant worked with WAG to reach an accommodation. The Applicant agreed to provide WAG with certain material in an effort to resolve the discovery dispute. The Applicant provided that material with its formal discovery response on April 11, 2016 and also explicitly objected to providing the requested confidential documents in that formal response.

15. If WAG was unsatisfied with the compromise documents the Applicant provided and if it believed the Applicant's refusal to provide the actual confidential documents was improper, WAG had an obligation to move to compel in a timely manner. It failed to do so.

16. Motions to compel are governed by Site 202.12(k). Motions to compel responses to data requests "must be made within 10 days of receiving the applicable response or objection" Site 202.12(k)(2). Applicant served its Objection to WAG's request for the confidential documents on April 11, 2016. If WAG wished to move to compel, it had 10 days to file such a motion. WAG never moved to compel and therefore waived the right to pursue access to the documents it requested through the discovery process.

17. As noted, WAG did file an Objection to the Applicant's Motion for Confidential Treatment on April 25, 2016. To the extent WAG might now try to recharacterize that filing as a motion to compel, it cannot do so. That filing was an objection, not a motion. WAG had an explicit obligation to file a motion to compel under Site 202.12(k) if it wished to challenge Applicant's refusal to provide documents to WAG in the context of a specific discovery request. Moreover, WAG would have had to file such a motion within 10 days pursuant to Site 202.12(k). Since Applicants served their objection on April 11, 2016, WAG would have had to file a Motion to Compel by April 21, 2016. See Site 202.12(k)(2); Site 202.8.

18. The record is clear. WAG is the only intervener who sought the confidential documents in discovery. The Applicant objected to providing those documents and WAG never moved to compel. Therefore, neither WAG nor any other intervenor now has a right to claim that lack of access to those documents can be a basis for delaying this proceeding.

IV. The Committee has Broad Discretion with Regard to Scheduling a Second Site Visit

19. The Intervenors further assert that the schedule should be delayed because the Committee has failed to schedule a second site visit. The Committee has broad discretion pursuant to Site 202.13 with regard to site visits. The rule does not identify a specific time period in which a site visit must be completed. The Intervenors have failed to identify a concrete reason as to why deadlines already identified in the Procedural Order and set by the rules should be delayed in order to accommodate a site visit that, pursuant to the rules, can be completed at any time.

20. In addition, if any party feels that it is necessary that they visit certain locations prior to filing testimony, there is nothing prohibiting a party from visiting any of the locations identified by the Intervenors in their Motion. These are all public locations. While the Applicant has made it clear that it does not object to scheduling a second site visit, the Applicant does not believe there is any basis to delay the entire proceeding in order to accommodate a second visit.

Respectfully submitted,

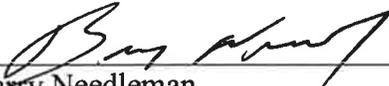
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: May 24, 2016

By: 
Barry Needleman, Bar No. 9446
Rebecca S. Walkley, Bar No. 266258
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
rebecca.walkley@mclane.com

Certificate of Service

I hereby certify that on the 24th of May 2016, an original and one copy of the foregoing Objection were hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the Distribution List.



Barry Needleman