

January 24, 2018

**VIA ELECTRONIC AND FIRST CLASS MAIL**

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

**Re: NH Site Evaluation Committee Docket No. 2015-02 – Antrim Wind LLC  
Response to Antrim Wind LLC December 21, 2017 Compliance Filing**

Dear Ms. Monroe:

The undersigned, each a party to the above referenced matter, are writing in response to Antrim Wind LLC's ("AWE") post-certificate submission distributed on January 8, 2018. AWE's submission contains two letters addressed to you, as Administrator of the Site Evaluation Committee ("Committee") that, together, serve as notice that AWE has secured the debt and equity financing required for construction of the Antrim Wind Project ("Project") and its intent to commence construction on or around February 1, 2018.

For the reasons detailed herein, AWE's submission is inadequate and the financial assurances required by the Certificate of Site and Facility ("Certificate")<sup>1</sup> have not been demonstrated. Additionally, the change in financial structure is contrary to the findings of the Committee as laid out in its March 17, 2017 Decision and Order Granting Application for Certificate of Site and Facility.

**A. BACKGROUND**

1. On March 17, 2017, the Committee issued a conditional Certificate granting AWE permission to erect 9 Siemens SWT-3.2-113 direct-drive wind turbines each with a nameplate generating capacity of 3.2 MW for a total nameplate capacity of 28.8 MW. *App. 33, at 19, 27* The turbines and related infrastructure would be located in the Town of Antrim along the Tuttle Hill ridgeline spanning southwestward to the northeastern slope of Willard Mountain. *App. 33 at 5*
2. AWE has agreed, and the Certificate requires, that it provide evidence that the debt and equity financing needed to construct the Project be in place prior to construction commencing. *App 33 at 68* RSA 162-H:2 III defines "commencement of construction" as 'any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site of the proposed facility.'
3. In assessing AWE's financial capability the Committee was required to consider, *inter alia*, AWE's financial commitments obtained or made in support of the construction and operation of the proposed facility. *N.H. Code Admin. Rules, Site 301.13 (a)*

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<sup>1</sup> State of New Hampshire Site Evaluation Committee Docket No. 2015-02 Re: Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility March 17, 2017 at 5.

4. Walden Green Energy, LLC (“WGE”), AWE’s U.S. parent, testified it would follow the most commonly used structure for funding wind projects in the United States which includes construction equity and construction debt. The capital stack for the Project would consist of \$10-13 million of equity and \$50-55 million in construction loan debt. When the Project becomes operational the construction loan would convert to a combination of term loan and tax-equity funding. *App 1 at 6-7; see also APP 33 at 65*
5. WGE, as majority owner and controlling shareholder of the Project, will secure the equity to construct and operate the Project with RWE’s backing. *App 33 at 65* The Project’s public pro forma assumes RWE equity of \$11 million which Mr. Weitzner characterized as a “very reasonable number” that could be “a little more” and could be less. *TR Day 1 pm at 32*
6. AWE obtained non-binding letters of interest from Bayerische Landesbank and KeyBank for construction debt financing. *App. 33, Appx. 18B, 18C* Other non-binding letters from Citicorp, State Street Bank and CCA Group were also filed showing interest in providing construction and/or tax-equity funding. *App. 15, Appx. W/S1, W/S2, W/S3* Mr. Weitzner promoted the letters as proof of “the ease with which AWE will be able to secure construction debt and tax equity.” *App 15 at 2* With RWE’s BBB- credit investment grade, Mr Weitzner insisted “the RWE name ... opens a lot of doors, and people are quite anxious and interested in lending money” and that banks are “extremely happy to be lending money to the RWE name. Very happy” *TR Day 1 pm at 60, 70*
7. RWE’s equity would be used to obtain the construction loan. The loan would be a ‘non-recourse’ project loan secured by collateral consisting of project assets. Lending banks generally would require the Certificate, long-term offtake agreement(s), an acceptable turbine supply agreement, balance of plant construction agreement and Project O&M agreement(s). *App 1 at 7; also see TR Day 1 am Deliberations at 69*

#### **B. POST-CERTIFICATE LETTERS ON CONSTRUCTION FINANCE**

8. AWE’s post-certificate submission includes two letters, each dated December 21, 2017, that address construction financing. One was signed by Henry Weitzner as co-founder of Walden Green Energy, the second by Stephen O’Reilly, CEO of RWE PI Walden Holdings, LLC.<sup>2</sup> The letters, taken together, appear intended to serve as “documentation demonstrating that debt and/or equity financing required for the construction of the Project is in place” in accordance with the Certificate conditions.
9. The Weitzner letter asserts that the debt and equity financing required to construct the Project is in place, that all of the construction equity will be provided by RWE Supply and Trading GmbH (“RWEST”), and that RWEST is funded by RWE. The letter is silent on the equity amount.
10. The O’Reilly letter confirms RWEST will supply construction equity, but omits any dollar amount,

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<sup>2</sup> RWE (or RWEST) PI Walden Holdings, LLC is an entity formed in 2015 for the purpose of holding the contractual agreements between Walden Green Energy and RWE Principal Investments. The LLC has one employee and the employee count is not expected to increase at any time in the future. *TR Day 2 am at 107, 108*

except to say it will be “higher than anticipated in the pro forma provided to the Committee.”

### C. DISCUSSION

11. RSA 162H:16 IV(a) requires the Committee find that an applicant has adequate financial and managerial capability “to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.” The Committee’s decision to condition the Certificate on the financing being in place prior to construction reflects the Committee’s unwillingness to accept AWE’s assertions that it could obtain sufficient financial resources. From the outset, AWE affirmed its support for this condition. *App 33 at 68*
12. At no time during cross-examination or in written testimony did AWE advise that the *full* cost of construction would be borne by RWE.<sup>3</sup> Such a capital structure, while possible, is not at all common, and entirely inconsistent with the financial narrative presented throughout the proceedings.
13. The O’Reilly letter alleges that RWEST “always maintained the option to construct the facility with all equity,” and points to oral testimony by Mr. Weitzner and Mr. Shaw to bolster the claim. However, actual testimony, when read in context, makes clear that a full equity position was never an intended scenario. *TR Day 1 pm at 32*

7 A. (Shaw) What I was saying was, Henry and his  
8 team are out trying to secure as many contracts  
9 for the output from this project as possible.  
10 That will then determine how much debt they can  
11 raise against the Project and therefore  
12 back-calculate into how much equity we need to  
13 contribute to the Project.

14 A. (Weitzner) And if I could add something to  
15 that. We're very confident that we're going to  
16 get the overwhelming majority of this project  
17 cash-flow-contracted.

18 Q. Okay. So you're confident, then, you'll get it  
19 contracted, and you're confident the \$11  
20 million is all RWE is going to have to put in.

21 A. (Weitzner) I think \$11 million is, yes, a very  
22 reasonable number. Could it be a little more?

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<sup>3</sup> RWE’s financial contribution will increase by 600% assuming Project costs are still \$63-65 million.

23 Yes. Could it be less? Yes.

14. It is evident from the Committee's deliberations, that the members expected AWE to proceed with third party construction financing and relied on the avowed ability of AWE's principals and advisors, namely the Walden management team, to raise capital as a show of financial capability. *TR Day 1 am Deliberations at 67, 69; also see Decision and Order Granting Application for Certificate of Site And Facility at 75*
15. AWE testified, and the Committee made note that most of the prerequisites for securing financing had already been met including a Pre-Construction Service Agreement (precursor to a Balance of Plant agreement), binding MOUs for a Turbine Supply Agreement and Service and Maintenance Agreement, favorable letters of support from lenders and tax-equity investors, a power purchase agreement with NH Electric Co-op for 25% of Project output and a letter of intent from Partners HealthCare to purchase the remainder. *TR Day 1 am Deliberations at 69, 70*
16. Thirteen months have passed since the Committee granted oral approval of the Certificate.<sup>4</sup> In that time, it appears Walden Green Energy has been unable to secure a construction loan from Bayerische Landesbank, KeyBank or any of the institutions Mr. Weitzner insisted would be "extremely happy" to lend money on the RWE name. The Weitzner/O'Reilly letters proffer no reason for the change in financial strategy but the inability to secure bank involvement calls into question Mr. Weitzner's testimony regarding the Project's economic attractiveness to outside lenders even with RWE's backing. It also raises doubt regarding the certainty of the offtake agreements since the amount of debt that could be raised directly correlates to the percentage of Project output under contract. *TR Day 1 pm at 32*
17. Casual statements in the Weitzner/O'Reilly letters that the amended structure is inconsequential to the Committee's assessment of financial capability belie the enormity of this change. In effect, the switch to a RWE-only arrangement fundamentally erases any weight the Committee placed on third-party lenders and/or investors in assuring the project can be constructed in accordance with the conditions.  
  
Further, to now claim that a 600% increase in RWE equity is immaterial against the company's \$6.4 billion cash position is simplistic and entirely unsubstantiated. The Weitzner/O'Reilly letters provide no evidence of RWE's agreement to the new arrangement. Neither letter appears on RWE letterhead nor are they copied to, or signed by duly authorized officers of RWE or RWEST. In fact, RWE officials experienced in wind project financing are likely also asking why this project is now unable to follow the traditional, less risky strategy originally intended. Absent third-party involvement, the Weitzner/O'Reilly letters represent a commitment without substance offered by individuals who are highly motivated to move the Project forward but who lack any proof of financial ability to do so. Even if Mr. Weitzner could provide evidence of the parent company's standing, this would not change the fact that the Committee relied on unwavering, sworn testimony that outside financial institutions would be involved and would carry out their own due diligence in assessing Project viability.

For the reasons just discussed, we respectfully ask that the Committee find AWE has not met the requisite condition to proceed with construction and to take steps to prohibit the company from moving forward until the condition is satisfied. In assessing financial capability, the record shows the Committee placed

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<sup>4</sup> Oral deliberations were conducted on December 7, 9 and 12 in 2016, at the end of which, a final vote of 5-1 was taken in favor of issuing a certificate. *TR Day 3 pm Deliberations at 155*

substantial weight on the ability of AWE's management team to raise outside funding. We now know such funding eluded AWE's team thus throwing into doubt its financial capability to construct and operate the Project in accordance with the Certificate. Given the record, it is not enough to now claim RWE will supply the cash needed to proceed.

Until and unless AWE is able to demonstrate, with documentation and other evidence, that it is following a financial strategy that is substantially consistent with the testimony presented and relied on by the Committee, the Committee should find the Project is out of compliance with the Certificate. In the alternative, if the only method of financing the Project today is through a 100% equity strategy with the German parent, AWE should seek an amendment to the Certificate at which time it would provide formal confirmation of RWE's irrevocable commitment to fully fund the construction.

Finally, the undersigned are very troubled by the nearly three-week delay before they received electronic copies of AWE's December 21, 2017 compliance filing. The adjudicative hearing has ended, but this matter is still active and the parties retain an on-going interest in the outcome. The issue of financial capability is obviously an important concern. The delay notwithstanding, we ask that the Committee act quickly to convene a hearing to address this letter.

Thank you for the opportunity to be heard on this important matter. If you have any questions regarding this letter, please contact Lisa Linowes at (603) 838-6588 or by email at [llinowes@windaction.org](mailto:llinowes@windaction.org)

Respectfully submitted,



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Richard Block

/s/ Annie Law



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Lisa Linowes for the Windaction Group

/s/ Mary Allen

cc: Michael Iacopino, Counsel for the Site Evaluation Committee  
Mary Maloney, Counsel for the Public  
Barry Needleman, Counsel for AWE  
Eric Maher, Counsel for Appellants before the NH Supreme Court