

PUBLIC MEETING OF THE NH SITE EVALUATION COMMITTEE

Comments by LISA LINOWES

JULY 29, 2020

Chairwoman Martin, members of the Committee, thank you for the opportunity to speak before you today. For the record, my name is Lisa Linowes. I have intervened in a number of dockets before the SEC including the Antrim Wind I and II applications. I also moderated the stakeholder group that proposed the SEC rules on Health and Safety and I drafted NH Site 301.18 for *Sound Study Methodology*. NH Site 301.18 was adopted by the Committee as drafted with minor amendments. Our stakeholder effort included input from 4 acousticians.

I only have 5-minutes, so I'll get straight to the point.

I respectfully ask that the Committee decline the Administrator's request cited in item #2 of the Agenda.

1. Residents living near the Antrim Wind facility are experiencing significant noise impacts both outside and inside their homes. If you have not had a chance to read the noise complaints filed that are posted on the SEC website, I encourage you to do so.
2. Pursuant to NH Site 301.18(i), the Administrator hired Cavanaugh Tocci to conduct sound compliance testing under complaint conditions.
3. Cavanaugh Tocci's amended protocol¹ for conducting sound testing assumes an SEC limit on turbine noise that is based on a one-hour averaging standard.²
4. Antrim Wind's winter sound monitoring also shows Antrim Wind applied a 1-hour standard.³

¹ https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02_2020-06-08_20019.docx.pdf

² NH Site 301.14(f)(2)(a) reads as follows: "With respect to sound standards, the A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA above background levels, measured at the L-90 sound level, between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above background levels, measured at the L-90 sound level, at all other times during each day, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, on property that is used in whole or in part for permanent or temporary residential purposes, at a location between the nearest building on the property used for such purposes and the closest wind turbine."

³ https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02_2020-05-13-20_awe_post_construction_sound_monitoring.pdf (at 2)

5. A 1-hour interval, denoted as Leq 1-hr is entirely contrary to the SEC rule and contrary to any previous SEC permit where the Committee imposed turbine noise limits. This would include Lempster Wind, Groton Wind, and Antrim Wind I⁴.
6. The SEC rules specifically cite a time frame of 1/8 second (Leq 0.125 sec). This fact has been repeatedly ignored or deliberately misapplied at Antrim Wind. The 1/8 second interval was intentionally selected by the stakeholder group for meeting the SEC sound standard. To ensure there was no confusion regarding the Leq timeframe, the 1/8 second interval was given its own rule at NH Site 301.18(e)(6). There is no foundation in the rules that supports a Leq of 1-hour.
7. The Administrator acted unilaterally and without authority when she approved a 1-hour interval in the Cavanaugh Tocci protocol despite formal complaints on record showing that the SEC rule was incorrectly being applied.⁵
8. Inserting an hourly average component into NH Site 301.14(f)(2)(a) significantly changes the standard adopted by the Committee. The rules are firm and not subject to rewrite or interpretation except by the Site Evaluation Committee. If the Administrator had questions regarding the plain language of the rule, the proper action would be for the Administrator to call a hearing of the Committee. Instead the Administrator decided a different interpretation of the rule without any apparent notification to the Committee or the Public.
9. The Committee's own language from its decision under Docket 2015-02 makes clear that 1-hour averaging was never a consideration. The decision on page 153 states:

"The Subcommittee notes that the Applicant guaranteed that noise levels associated with the Project will not exceed the requirements set forth in N.H. CODE ADMIN. RULES, Site 301.14 (f)(2)(a), i.e. the greater of 45 dBA or 5 dBA above background levels, measured at the L-90 sound level, between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above background levels, measured at the L-90 sound level, at all other times during each day. The Subcommittee finds that so long as the Project complies with the noise level requirements set forth in the rules, that it will not have an unreasonable adverse effect on health and safety." *Decision and Order Granting Application for Certificate of Site and Facility at 153. March 17, 2017.*

⁴ SEC orders: Lempster Wind (Dk #2006-01), Groton Wind (Dk #2010-01), Antrim Wind (Dk #2012-01)

⁵ https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02_2020-02-25_linowes_protocol_comments.pdf

In conclusion, there can be no disagreement between the plain language of the rules and how the rules are applied. Tasking Cavanaugh Tocci with determining whether “AWE sound complies with the NH SEC Rule limits” when Cavanaugh Tocci’s protocol disagrees with the SEC rule is misguided, irresponsible, and carries legal risk.

The Committee’s response to the legislators’ April 17th letter was an appalling dismissal of what’s happening at Antrim. The lack of engagement by the Committee on this issue which falls squarely under its authority and cannot be delegated to the Administrator has created significant angst among residents living near Antrim Wind and among many others in New Hampshire who worked to ensure the SEC adopted sufficiently protective rules. If Cavanaugh Tocci is allowed to proceed, the effect will be the revocation of the SEC rule with no action by this Committee. Such an outcome would be untenable.

In lieu of the Administrator’s request I ask that a technical session be convened between the parties that is moderated by Attorney Iacopino and possibly Attorney David Wiesner, both of whom were engaged in the rulemaking proceeding. At that time, the parties can hear from any of the acousticians who participated in the rulemaking. Cavanaugh Tocci, Epsilon, and Acentech were not involved when NH Site 301.18 was drafted and adopted.