

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
Docket No. 2022-01

Town of Lempster
Petition for Declaratory Ruling

INTERVENORS' OBJECTION TO THE TOWN OF LEMPSTER'S
MOTION FOR REHEARING AND/OR CLARIFICATION

NOW COME Avangrid Renewables, LLC (“Avangrid Renewables”), Lempster Wind, LLC (“Lempster Wind”), and Kevin and Debra Onnela (“the Onnelas”) (collectively, “the Intervenors”), by and through their undersigned attorneys, and pursuant to N.H. Code Admin. R. Site 202.14 (f), respectfully object to the Town of Lempster’s Motion for Rehearing and/or Clarification (“the Motion”) by stating as follows:

STANDARD OF REVIEW

1. A Motion for Rehearing filed under RSA 541:3 must “set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.” RSA 541:4. The rules of the New Hampshire Site Evaluation Committee (“the SEC”) further require that a motion for rehearing must:

- (1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;
- (2) Describe how each error causes the committee’s order or decision to be unlawful, unjust or unreasonable;
- (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and
- (4) Include any argument or memorandum of law the moving party wishes to file.

N.H. Code Admin. R. Site 202.29.

2. “The purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invite reconsideration upon the record to which that decision rested.” *Dumais v. State of New Hampshire Personnel Commission*, 118 N.H. 309, 311 (1978). “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Public Service Company of New Hampshire d/b/a Eversource Energy*, N.H. PUC Docket No. DE 16, 241, Order Denying Motions for Reconsideration (Dec. 7, 2016) at 4-5.

3. “A motion for rehearing must be denied where no ‘good reason’ or ‘good cause’ has been demonstrated.” *Joint Application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility, N.H. SEC Docket No. 2015-06, Order on Applicant’s Motion for Rehearing of Decision and Order Denying Application* (July 12, 2018) at 7 (citations omitted).

4. The Town’s Motion fails to meet the above-stated standards for rehearing. The Motion does not identify any errors of reasoning or of law, nor does it describe how the Subcommittee’s December 1, 2022 Order on the Town’s Petition for Declaratory Ruling (“the Order”) is unlawful, unjust or unreasonable. The Motion also does not demonstrate that the Order overlooked or mistakenly conceived any matter. Rather, the Motion merely restates prior arguments and requests a different outcome. In these circumstances, no good reason or good cause exists for rehearing. The Motion, therefore, must be denied.

ARGUMENT

5. In addition to failing to present the applicable standard of review for a rehearing motion, the Motion does not even attempt to meet it. Rather than explaining why the Order is unlawful or unreasonable as required by RSA 541:4, Section I of the Motion asserts that the Order is unclear, and Sections II and III of Motion simply present the same text, map and photos that are contained in of Sections I and II of the Town's Supplemental Brief dated July 29, 2022. In fact, the only textual differences between the Town's Supplemental Brief and its Motion are the conclusions, and the Motion's additional argument that the Order is unclear. The Subcommittee has already considered and rejected the information and arguments contained in Sections II and III of the Motion. Because no new information or arguments are presented in support of the Motion, it must be denied.

6. The Town's Motion for Clarification should also be denied, as the arguments contained in Section I of the Motion have already been considered and rejected by the Subcommittee. In that Section, the Town merely reasserts its argument that the Intervenors should place gates at the intersection of Ridge Road and Bean Mountain Road, instead of the **entrances** to Bean Mountain Road, "and that would be consistent with the 2007 Certificate." *Motion* at 1. The Motion also argues that it is unclear as to whether the Order answered the question of whether the 2007 SEC certificate requires the gates to be on Bean Mountain Road in their current location. *Motion* at 2. However, this argument is unpersuasive as it overlooks the Order's specific finding that "[t]he 2007 Certificate must have contemplated the gating of Bean Mountain Road as part of the **requirement** to gate entrances to the facility." *Order* at 4 (Emphasis added). In view of this specific language, the Order needs no clarification. The Motion to Clarify, therefore, should be denied.

7. Also in support of this Objection, the Intervenors hereby incorporate by reference all of their previously-filed pleadings, exhibits, proposed findings and rulings, the Joint Statement of Facts dated May 12, 2022, and the Information to Aid Subcommittee dated September 30, 2022.

WHEREFORE, for the reasons set forth above, the Intervenors respectfully request that the Subcommittee:

- A. Deny the Motion for Rehearing and/or Clarification filed by the Town of Lempster;
and
- B. Grant such further relief as is appropriate.

Respectfully submitted,
Avangrid Renewables, LLC and
Lempster Wind, LLC
By their Attorneys:
Orr & Reno, P.A.

Dated: January 3, 2023

By:



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CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this objection was sent via electronic mail to the Distribution List for this docket.

Jane S. Kiger