

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2022-01

**Town of Lempster
Petition for Declaratory Ruling**

**AVANGRID RENEWABLES, LLC’S, LEMPSTER WIND, LLC’S
AND KEVIN AND DEBRA ONNELA’S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

NOW COME Intervenors Avangrid Renewables, LLC (“Avangrid Renewables”) and Lempster Wind, LLC (“Lempster Wind”), and Kevin and Debra Onnela, by and through their attorneys, and pursuant to N.H. Admin. R. Jus 812.05¹ and the parties’ Joint Statement of Material Facts² (“Joint Statement”) filed May 12, 2022 in this docket, respectfully submit to the Presiding Officer the proposed findings of fact and conclusions of law set forth below. The Intervenors respectfully request that in addition to finding the facts contained in the parties’ Joint Statement, the Subcommittee assigned to the above-captioned docket make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Lempster Wind owns and operates a 24-megawatt wind-powered electricity generating facility (“the Lempster Wind Facility”) on Lempster Mountain in Lempster, New

¹ The Notice of Prehearing Conference issued April 4, 2022 in the above-captioned docket stated “[t]o the extent the Committee’s statutes and rules do not address an issue of policy or procedures, the Subcommittee shall rely upon RSA 541-A and Jus Part 800 *et seq.*” Because the Committee’s statutes and rules do not contain provisions for the submission of findings of fact and conclusions of law, this submission is made pursuant to Jus 812.05.

² The introductory paragraph on page 1 of the Joint Statement of Material Facts states that the parties agree that they intend to separately submit additional facts to the Subcommittee for inclusion in the record of this proceeding.

Hampshire. *See* Avangrid Renewables, LLC’s and Lempster Wind, LLC’s Objection to Town of Lempster’s Petition for Declaratory Ruling (“Avangrid Renewables’ Objection”), ¶ 1.

2. Lempster Wind’s application for a Certificate of Site and Facility (“the Application”) for the Lempster Wind Facility was reviewed and adjudicated by the New Hampshire Site Evaluation Committee (“the SEC” or “the Committee”) in SEC Docket No. 2006-01. *See* Avangrid Renewables’ Objection, Attachments 3 and 5.

3. The Application states that the Lempster Wind Facility will be located on private property, and contains a list of the Lempster Tax Map/Parcel numbers of the properties comprising the Facility site, and a map depicting those properties (“the Application Map”). *See* Avangrid Renewables’ Objection, ¶¶ 6 and 8.

4. The SEC consistently defined the Project Site as the limits of the land leased by Lempster Wind for the Project. *See* attached Exhibit A, p. 1-2, the SEC’s Order and Notice of Public Informational Hearing in Docket No. 2006-01 dated October 23, 2006; *see also*, Avangrid Renewables’ Objection, Attachment 5, Bates p. 63.

5. The Application Map shows that the west side of Bean Mountain Road up to the eastern edge of the Onnelas’ property leased by Lempster Wind, falls within the boundaries of the site of the Lempster Wind Facility. *See* Avangrid Renewables’ Objection, ¶ 8 and Attachment 4.

6. The Application refers to Bean Mountain Road as “private” and describes travel directions to the Lempster Wind Facility site as follows: “Access to the Project site is available via the current access entrance to the property of landowners Kevin & Debra Onnela, 107 Bean Mountain Road in Lempster...At the sign ‘Private road – town maintenance ends’ bear to the left

and continue straight up Bean Mountain Road (private).” *See* Avangrid Renewables’ Objection, ¶ 9 and Attachment 3, p. 24.

7. Bean Mountain Road provides access to the west side of the Project Site and contains the electrical interconnection line that brings the wind-generated electricity off the ridge of Lempster Mountain and down Bean Mountain Road, and then connects to the local electrical distribution system at the junction of Bean Mountain Road with Nichols Road. *See* Attached Exhibit B, aerial map of part of Project Site, Onnelas’ Objection, Exhibit D, aerial map; *see also* Avangrid Renewables’ Objection, Attachment 3 (Application of Lempster Wind, “Project Interconnection”), p. 29.

8. This electrical interconnection line on Bean Mountain Road is shown on a number of the maps submitted by Lempster Wind in its SEC Application. *See* Attached Exhibit C, found within Appendix 9.01 to the Application. That Appendix is titled “NH DES Site Specific Application Package”; *see also* attached Exhibit D, found within Appendix 14 to the Application. That Appendix is titled “Project Turbine Layout Map and Coordinates”.

9. The Town was a party to the SEC proceedings regarding the Application, was represented by counsel, and participated throughout the SEC proceedings. *See* Avangrid Renewables’ Objection, Attachment 5, p. 9.

10. On June 28, 2007,³ the SEC granted the Application by issuing a Decision and Order granting a Certificate of Site and Facility to Lempster Wind. *See* Avangrid Renewables’ Objection, ¶ 13 and Attachment 5.

11. The SEC’s Order includes the SEC’s Decision and conditions contained therein, and authorizes Lempster Wind to “site, construct and operate” the Lempster Wind Facility “as

³ The date contained in paragraph 6 of the Joint Statement of Material facts incorrectly states that the date of the SEC’s Decision and Order is June 28, 2006. The correct date is June 28, 2007.

outlined in the Application subject to the terms and conditions of the Decision and Order.” *See* Avangrid Renewables’ Objection, ¶ 15. The Order states that the project, “includes access roads, a metering station and an interconnection point with the Public Service Company of New Hampshire 34.5 kv distribution line at the intersection of Bean Mountain Road and Nichols Road in Lempster.” *See* Avangrid Renewables’ Objection, Attachment 5, Bates p. 63.

12. The Parties have agreed in their Joint Statement that “the layout of the project area includes several roads running between the windmills as well as another road, Bean Mountain Road running through the site.” Joint Statement, ¶ 8.

13. The Public Counsel Agreement and the Final Town Agreement state that “entrances to the project site shall be gated, and locked during non-working hours.” (emphasis supplied) . . . Joint Statement, ¶ 4 and its Exhibits A and C.

14. “Project site” is defined in the Draft Town Agreement and the Final Town Agreement to include “all Wind Turbines, access roads, and other facilities required for construction and operation of the Wind Park.” Joint Statement, ¶ 5 and its Exhibits B and C.

15. Bean Mountain Road is both an “entrance to the project site” as well as an “other facilit[y] required for construction and operation of the Wind Park.” It qualifies as a facility because it provides the location of the interconnection line that carries the electricity generated by the wind turbines and then connects with the local distribution system at the junction of Bean Mountain Road and Nichols Road.

16. The SEC Decision and Order contain conditions that are needed to restrict public access to the Lempster Wind Facility turbines, structures and supporting equipment, such as the interconnection line described above. *See* Avangrid Renewables’ Objection, Attachment 5, Bates pp. 51-52.

17. Consistent with the SEC's Decision and Order, Lempster Wind constructed the Lempster Wind Facility, including the interconnection line on Bean Mountain Road to its interconnection point at Nichols Road, and that electrical line has been in operation since it was constructed and Lempster Wind began producing electricity. *See* Attached Exhibit F, Affidavit of Ryan Haley, ¶ 3.

18. The SEC Decision and Order require Lempster Wind to gate and lock entrances to the Lempster Wind Facility site. *See* Avangrid Renewables' Objection, ¶ 14, and Joint Statement, ¶ 7.

19. Entrances to the site of the Lempster Wind Facility are located on Bean Mountain Road. *See* Avangrid Renewable's Objection, ¶ 24 and Attachment 2, ¶ 10, and Attachment 6, ¶ 3.

20. Two gates located on Bean Mountain Road prevent the public from entering the Lempster Wind Facility site, and trees and topography on either side/ends of the gates provide natural barriers to entry. *See* Avangrid Renewables' Objection, ¶ 28 and Attachment 6, ¶ 7.

21. The Town did not dispute the installation of the subject west and east gates and signs on Bean Mountain Road until 2020 when an ATV club requested that the Town Selectmen open Bean Mountain Road for ATV riding. One of the Selectmen who voted to open the road, Phillip Tirrell, was a member of the ATV club. *See* attached Exhibit E, Town of Lempster's Interrogatory Answers No. 14, 15 and 20 and its attached Selectmen's Meeting Minutes and documents regarding their approval of Bean Mountain Road for ATV use, from Superior Court Case no. 220-2020-CV-00112, Town of Lempster v. Onnela, et al.

Conclusions of Law

22. Because the two gates on Bean Mountain Road are located at entrances to the Lempster Wind Facility site, they are consistent with the requirements of the SEC's Decision and Order dated June 28, 2007 in SEC Docket No. 2006-01.

23. Because the two gates on Bean Mountain Road are located at entrances to the Lempster Wind Facility site, they are required by the SEC's Decision and Order dated June 28, 2007 in SEC Docket No. 2006-01.

Respectfully submitted
Avangrid Renewables, LLC and
Lempster Wind, LLC
By their Attorneys:
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Dated: June 21, 2022

By:



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CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of the within pleading was sent via electronic mail to the Distribution List.

Susan S. Thigpen

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