

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2022-01**

**Petition for Declaratory Ruling  
Regarding Avangrid Renewables, LLC and Lempster Wind, LLC**

**Order on Petitioner's Motion for Rehearing and/or Clarification**

**March 1, 2023**

On December 1, 2022, the Site Evaluation Subcommittee ("Subcommittee") issued its final order in this docket ("Final Order"). In its Final Order, the Subcommittee found Lempster Wind's 2007 Certificate of Site and Facility ("2007 Certificate") does not specify the precise locations along Bean Mountain Road at which gates must be installed. The Final Order continued, noting that the current locations of two gates placed across Bean Mountain Road are consistent with the 2007 Certificate. The petitioner subsequently filed a timely motion for rehearing and/or clarification. Shortly thereafter the intervenors in this matter filed a joint objection.

On January 12, 2023, the Subcommittee held a public meeting to consider the petitioner's motion and the intervenor's objection and deliberate. Attorney Michael Courtney appeared on behalf of the petitioner, the Town of Lempster ("Town"), Attorney Douglas Patch appeared on behalf of intervenor Avangrid Renewables, LLC and Lempster Wind, LLC ("Avangrid") and Attorney Thomas Quarles appeared on behalf of intervenors Kevin and Debra Onnela. For the reasons that follow, the Town's motion is denied.

**I. The Town's Motion**

The Town's motion essentially raises two issues. First, the Town argues the Subcommittee's Final Order is unclear because it does not explicitly state whether the current gates across Bean Mountain Road are required to be at their current location.

Second, the Town re-asserts its arguments in the Town's original Petition for Declaratory Relief, Memorandum of Law in Support of its Petition for Declaratory Relief, and its Supplemental Brief. These arguments focus on whether Bean Mountain Road is an "Access Road" under the Certificate of Site and Facility and the classification of Bean Mountain Road under the classification system of roads in the State of New Hampshire. The Town appears to restate these arguments in order to request the Subcommittee grant rehearing.<sup>1</sup>

## **II. The Intervenors' Objection**

The intervenors' filed a concise objection stating the standard for rehearing and asking that the Town's motion be denied.

## **III. Standard of Review**

### **a. Motions for Rehearing**

In accordance with N.H. Code Admin. R., Site 202.29, 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.

Decisions of the Site Evaluation Committee and its subcommittees are reviewable in accordance with RSA 541. RSA 162-H:11. Under RSA 541, a party may request rehearing of an agency's order within 30 days, and the agency "may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion." RSA 541:3. IV. A subcommittee may grant rehearing or reconsideration for "good

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<sup>1</sup> It is unclear from the Town's motion if any relief other than clarification is requested. Although the Town asserts it is moving for rehearing, the motion's conclusion only asks the Subcommittee to clarify its final order. See Motion at 9. At the January 12 hearing, the Town only referred to its motion as a motion for clarification.

reason” if the moving party shows that an order is unlawful or unreasonable. See RSA 541:3 and RSA 541:4. A successful motion must establish “good reason” by showing that there are matters that the subcommittee “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that could not have been presented at the hearing. See, e.g., *Appeal of Gas Service Inc.*, 121 N.H. 797, 801 (1981).

#### **b. Motions for Clarification**

The legal standard for granting a motion seeking clarification of subcommittee orders is not addressed in statute, rule, or binding precedent. In practice, motions for rehearing often seek alternate and concurrent relief in the same pleading as a motion for clarification and are addressed concurrently with motions for rehearing.

#### **IV. Analysis**

As detailed at length in the Prehearing Order<sup>2</sup> and in the Order on Intervenors’ Motion for Clarification and/or Rehearing<sup>3</sup> concerning that prehearing order, the nature of a declaratory ruling and the requested ruling in this proceeding have been repeatedly at issue. Notably, the presiding officer at the prehearing conference repeatedly sought to clarify the exact declaratory ruling requested.<sup>4</sup> The presiding officer even suggested to the Town that an appropriate question for declaratory ruling would be whether Bean Mountain Road is an “access road” and therefore required to be gated under the 2007 Certificate of Site and Facility.<sup>5</sup> Ultimately, the Town and intervenors’ agreed the declaratory ruling before the subcommittee was whether the

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<sup>2</sup> See Prehearing Order, docket Tab 11.

<sup>3</sup> See Order on Intervenors’ Motion for Clarification and/or Rehearing, docket Tab 15.

<sup>4</sup> We note, under N.H. Code of Admin. R. Site 203.01(b)(1), all petitions for declaratory rulings must include the exact ruling requested.

<sup>5</sup> Order on Intervenors’ Motion for Clarification and/or Rehearing, docket Tab 15, at 3.

certificate requires the installation of locked gates at their current locations on Bean Mountain Road.

The Town's motion for rehearing and/or clarification does not identify errors of fact, errors of reasoning, or errors of law the Town wishes to have reconsidered. Nor does it describe how specific errors in the Final Order render it unlawful, unjust, or unreasonable. The Town's motion does not demonstrate the Subcommittee overlooked or mistakenly conceived any matter. Accordingly, the motion fails to provide the "good reason" required to grant rehearing.

As for clarification, the Subcommittee finds the Town's motion unpersuasive. As stated during our initial public deliberations, the 2007 Certificate does not specify the location of locked gates.<sup>6</sup> Although the current locations of the gates are consistent with the 2007 Certificate, the Final Order is clear: the 2007 Certificate does not specify the precise locations gates must be installed. As the 2007 Certificate does not specify the precise locations, the 2007 Certificate does not require the gates on Bean Mountain Road to be maintained at their exact current locations. We find there is no need for further clarification or revision to our Final Order.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the Town's Motion for Rehearing and/or Clarification is DENIED.

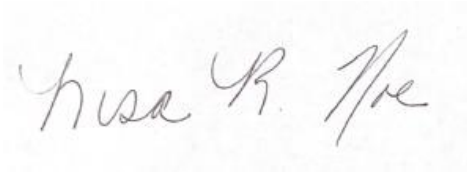
So ordered, this 1<sup>st</sup> day of March, 2023.



Carleton B. Simpson, Presiding Officer

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<sup>6</sup> See Minutes of Public Meeting for Deliberation, docket Tab 22.

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Lisa Noe, Public Member

A handwritten signature in cursive script that reads "Michael Servetas". The signature is written in dark ink on a light-colored background.

Michael Servetas, Member