

September 1, 2022

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*Via E-Mail only: admin@sec.nh.gov*

Commissioner Carleton Simpson, Presiding Officer  
New Hampshire Site Evaluation Committee  
21 South Fruit Street  
Concord, NH 03301

**Re: SEC Docket No. 2022-01 – Town of Lempster Petition for  
Declaratory Ruling**

Dear Commissioner Simpson:

Please find attached for filing in the above-captioned docket, Kevin and Debra Onnela, Avangrid Renewables, LLC, and Lempster Wind, LLC's, Intervenors' Objection to Town of Lempster's Supplemental Brief.

In accordance with the Notice of Prehearing Conference issued April 4, 2022, and N.H. Admin. R. Site 202.07(c), electronic copies of this letter and attachment document are being sent to the Distribution List via electronic mail only.

Please call if you have any questions regarding the above. Thank you.

Sincerely yours,



Thomas Quarles, Jr.

TQ:jms

Enclosures

cc: Distribution List (*via e-mail only*)

**STATE OF NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

Docket No. 2022-01

Town of Lempster  
Petition for Declaratory Ruling

**INTERVENORS' OBJECTION TO**  
**TOWN OF LEMPSTER'S SUPPLEMENTAL BRIEF**

NOW COME Intervenor Kevin and Debra Onnela (“Onnelas”), by and through their attorneys, Devine, Millimet & Branch, P.A., and Avangrid Renewables, LLC (“Avangrid Renewables”) and Lempster Wind, LLC (“Lempster Wind”), by and through their attorneys, Orr & Reno, P.A., and respectfully object to the Town of Lempster’s (“Town”) Supplemental Brief, stating as follows:

1. Following the site visit in this matter on July 25, 2022, the Town filed a Supplemental Brief (“Brief”) with the New Hampshire Site Evaluation Committee (“SEC”) in the above-captioned docket. However, no new facts or legal arguments are presented in this Brief. Rather, it is almost entirely devoted to the Town’s claim that because Bean Mountain Road is a public town road, neither the SEC nor the Intervenor have any legal authority to require that the road be gated in the two places where it enters the Lempster Wind project site.

2. As the SEC knows, the issue of whether Bean Mountain Road is a public, town road is heavily contested. Nevertheless, the Intervenor have repeatedly argued both in this SEC proceeding and the prior Superior Court case that led to this SEC proceeding, that the status of Bean Mountain Road is immaterial to the determination that the SEC must make in this matter.

3. The Sullivan County Superior Court in its Order on Summary Judgment, dated October 25, 2021 stayed the case pending before it after finding that the SEC had primary jurisdiction to determine not whether Bean Mountain Road is a public road, but instead whether

the SEC’s original decision to “gate and lock all entrances to the project site” allows the Onnelas (and Lempster Wind) to maintain a gate on the east [and west] side [sic] Bean Mountain Road.<sup>1</sup> Id. at p. 4. Such a determination should have been the focus of the SEC’s recent site visit because that is the only thing the SEC needs to decide in this matter.

4. In making its determination, the SEC is aided by the Parties’ Joint Statement of Material Facts, ¶¶ 4 and 7, which plainly establish that the SEC has ordered Lempster Wind to “[g]ate and lock entrances to the project site.” The parties have also stipulated 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.” Id. at ¶ 8.

5. Therefore, the Superior Court does not need or expect a determination by the SEC regarding whether Bean Mountain Road is a public road, and such a determination is not necessary for the SEC to determine whether the subject gates are at “entrances to the project site”, or whether Bean Mountain Road, under the Draft Town Agreement and Final Town Agreement definition of “project site,” is an “access road [or] other facility required for construction and operation of the Wind Park.” Id. at ¶¶ 7 and 5.

6. The Intervenors’ position is that Bean Mountain Road is both an “entrance” and “access road” to the project site, and therefore must be gated as a public safety measure to prevent the public from accessing the project site. In addition, because it is undisputed that the west side of Bean Mountain Road contains the electrical interconnection line that carries wind-generated electricity from the project site to the point of interconnection with the local electrical distribution system<sup>2</sup>, the Intervenors also contend that the road is an “other facility required for the...operation of the Wind Park.” Therefore, a finding by the SEC that Bean Mountain Road is

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<sup>1</sup> This Order is Attachment 1 to Avangrid’s Objection to the Town’s Petition for Declaratory Judgment filed with the SEC on April 8, 2022.

<sup>2</sup> See Avangrid Renewables, LLC’s, Lempster Wind, LLC’s and Kevin and Debra Onnela’s Proposed Findings of Fact and Conclusions of Law, ¶ 7.

either an “entrance,” “access road” or project “facility” would require that the road be gated, and public access prohibited.

7. The Town alleges, in its Supplemental Brief, that because Bean Mountain Road is a “town road”, the Intervenor’s “cannot use the SEC Order and Agreements to limit the public’s access to Bean Mountain Road.” Brief, p. 10. However, that claim ignores the fact that the SEC’s statutory jurisdiction and authority over energy facility siting preempt and override any contrary or inconsistent statute or regulation. Such is the case here, where the Town claims it has authority over the use of Bean Mountain Road and can designate it as open for ATV use which would allow ATV users to access the Lempster Wind project site.

8. The Intervenor’s have raised this SEC preemption argument in both the Superior Court and in this SEC proceeding. It is expressed in greatest detail in Intervenor’s Avangrid and Lempster Wind’s Objection to the Town’s SEC Petition for Declaratory ruling. There, the scope of the SEC’s general and specific authority on preemption, RSA 162-H:4 and 162-H:16, IV is discussed. See pp. 2, 13-16, 24. Note that RSA 162-H:16, IV, (b) specifically requires that the SEC give “due consideration” to the views of “municipal governing bodies.” The Town had every opportunity in the original SEC review and certification proceeding to assert that Bean Mountain Road was a public road and to argue that it could not be gated. However, the Town failed to do so. To the contrary, the Town agreed (in the Town Agreement that was made part of the SEC’s Order) that Bean Mountain Road, which provides “entrances” to the project site, and is part of the project site, must be gated. Moreover, the Town never appealed the SEC’s order requiring that entrances to the Lempster Wind project site (such as those provided by Bean Mountain Road) be gated and locked.

9. As already discussed in the Intervenor’s pleadings, the Town cannot wait many years after these gates were erected, and then claim for the first time, that they should be



CERTIFICATE OF SERVICE

I hereby certify that on the above date, a copy of the foregoing Intervenors' Objection to Town of Lempster's Supplemental Brief was provided via electronic mail to the Distribution List for this Docket.

Dated: September 1, 2022

/s/ Thomas Quarles, Jr.  
Thomas Quarles, Jr.