

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE  
Docket No. 2012-01**

**Re: Application of Antrim Wind Energy, LLC for a Certificate of Site  
and Facility for a Renewable Energy Facility Proposed to be  
Located in Antrim, Hillsborough County, New Hampshire**

**June 4, 2012**

**ORDER ON UNASSENTED-TO MOTION FOR PROTECTIVE ORDER  
AND CONFIDENTIAL TREATMENT**

**Background**

On January 31, 2012, Antrim Wind Energy, LLC (Applicant) submitted an Application for a Certificate of Site and Facility, seeking authority to site, construct and operate a renewable energy facility in the Town of Antrim, Hillsborough County, New Hampshire (Application). The Applicant proposes the siting, construction and operation of not more than 10 wind turbines, each having a nameplate capacity of 3MW for a total nameplate capacity of 30MW, along with associated facilities, including a substation, distribution lines, and related buildings and structures. The Applicant contemporaneously filed an Unassented-To Motion for Protective Order and Confidential Treatment (Motion) regarding certain financial documents identified as the Applicant's "balance sheet." On February 8, 2012 the Attorney General objected to the Motion.

Every application for a certificate of site and facility is required to include, inter alia, a description with reasonable detail of the applicant's financial capability for construction and operation of the proposed facility. *See*, RSA 162-H: 7, V (e); N.H. CODE OF ADMINISTRATIVE RULES, Site 301.03 (h) (5). The Committee's administrative rules require that each application include a statement of the assets and liabilities of the Applicant. *See*, N.H. CODE OF ADMINISTRATIVE RULES, Site 301.03(h)(6). As part of its Application, the Applicant has submitted certain financial information in the form of a balance sheet setting forth the assets and liabilities of the Applicant. The Applicant has also filed a redacted version of the balance sheet. The redacted version contains titles only and no data. The Applicant is structured as a Delaware limited liability company (LLC) and is not a publicly held company.

The Applicant asserts that the un-redacted financial information contained within its balance sheet is commercially sensitive and proprietary, and is not the type of information that is disclosed publicly. The Applicant also asserts that disclosure of the information to the general public or to competitors could have a material adverse effect on the Applicant because the

electricity generation and related markets are intensely competitive. The Applicant asserts that competitive generators safeguard this type of information and take steps to insure that it is not disclosed to the public or to one another for various reasons, some of which relate to preserving their negotiating positions in commercial transactions with third parties. Therefore, the Applicant requests that its balance sheet not be disclosed to the public. The Applicant also requests that the balance sheet only be disclosed to those parties to this proceeding who agree to sign a confidentiality agreement.

In addition the Applicant requests that the same protective order and confidentiality agreement apply to future filings seeking confidential treatment.

The Attorney General filed an objection to the Motion. The Attorney General objected to the Motion on two grounds. First, the Attorney General objected on the basis that intervenors had not yet been determined and therefore had not had a chance to review and respond to the motion. Second, the Attorney General objected, alleging that the Motion seeks prospective relief with respect to documents that have not yet been filed. The Attorney General's objection does not dispute that the un-redacted financial information contained within the balance sheet is commercially sensitive and not the type of information that is normally disseminated in public. The Attorney General's objection does not dispute the assertion by the Applicant that the electricity generation market is intensely competitive or that the Applicant has a legitimate interest in seeking a protective order in order to preserve its negotiating position in commercial transactions with third parties.

On May 18, 2012, I issued an order that addressed all motions to intervene that were filed in this docket. Since that date no intervenor has objected to the Motion.

### **Analysis**

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of a state agency. RSA 91-A: 4, I. The Committee has previously addressed motions for confidential treatment in the context of confidential, commercial, and financial information regarding applicants and their affiliates. See e.g., Application of Groton Wind, LLC, No. 2010-01; Application of Laidlaw Berlin BioPower, No. 2009-02. Requests for confidential treatment and protective orders must meet the requirements set forth by the Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) and *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005). These cases require a three step analysis to determine whether information should be exempt from public disclosure pursuant to the Right-to-Know law, RSA 91-A: 5, IV.

The first prong of the analysis is to determine if the Applicant has identified a privacy interest. If a privacy interest is invoked then the agency must assess whether there is a public interest in disclosure. Disclosure should inform the public of the activities and conduct of the government. If disclosure does not serve that purpose then disclosure is not required. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *See also, Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 NH 540, 553 (1997). (The agency must perform a balancing test to determine whether the records should be protected or if the public's interest in disclosure is outweighed by the interest in protecting confidential, financial and commercial information.)

In this case it is undisputed that the information sought to be protected is financial and commercial information. The Applicant has also identified a *bona fide* privacy interest in its financial information. As a privately held company the Applicant is not generally required to make its balance sheet or financial statements public. A balance sheet sets forth the assets, liabilities and the owner's equity in a company. Knowledge of the contents of the Applicant's balance sheet might give a competitive advantage to the Applicant's competitors, suppliers and vendors. The confidentiality of the Applicant's balance sheet is particularly important at this stage of the Applicant's planning because it has not yet completed negotiations with vendors for the purchase of wind turbines and other major components of the proposed facility. Publication of the financial information contained in the Applicant's balance sheet at this time might give potential turbine and other vendors an unfair advantage through the course of negotiation.

On the other hand disclosure of the financial information contained in the Applicant's balance sheet at this time will do little to inform the public of the conduct or activities of the government. The Subcommittee will eventually be required to determine whether the Applicant has adequate financial capability "to assure construction and operation of the proposed facility in continuing compliance with the terms and conditions of a certificate." *See*, RSA 162-H: 16, IV (a). However, the Applicant does not assert that it will finance the construction and operation of the proposed facility from its own funds but rather will seek project financing through "industry standard non-recourse" financing that "will include monetization of the tax attributes generated by the Project." *See*, Application p. 55. The Applicant asserts that such project financing is customary in the industry. The financing sought by the Applicant is routinely used for the "financing of infrastructure and other highly capital intensive projects where the capital provider's interest is secured by the future cash flows of the project rather than the balance sheet of the project sponsors." *Id.* This form of financing is "non-recourse," because "the capital provider only has claim to the assets and cash flow of the project, rather than the assets or credit of the project sponsors." *Id.*

The important question with respect to whether the Applicant will have the financial capability to assure compliance with the terms and conditions of a certificate is not what assets

the Applicant owns today but what is the near-term prospect for project financing. The Applicant does not present such information at this juncture. Under these circumstances, the Applicant's present balance sheet is not likely to influence the Subcommittee's consideration of financial capability and therefore its publication will do very little to inform the public about the conduct or activities of government or the Subcommittee's eventual decision, one way or the other, on the financial capability of the Applicant.

The Applicant's balance sheet is commercial and financial information in which the Applicant maintains a substantial privacy interest. The interest of the public in understanding the conduct and activities of government is not substantially advanced by publication of the balance sheet. I find that the Applicant's privacy interest in the balance sheet and included financial data outweighs any public interest that may exist. The motion for confidentiality and protective treatment is therefore granted in part. The document identified as the balance sheet shall remain confidential. Parties to this proceeding who wish to obtain access to the document shall sign the attached confidentiality agreement and abide by its terms.

Counsel for the Public has an important statutory role in the proceedings before the Committee. Full and vigorous participation of Counsel for the Public is necessary to insure the goals of RSA 162-H. Therefore, the aforementioned un-redacted balance sheet shall be disclosed to Counsel for the Public without execution of a confidentiality agreement. However, Counsel for the Public shall not further disclose such information without a further order from the Committee.

To the extent that the Applicant seeks an order regarding confidentiality of documents to be filed in the future, that request is denied. It is impossible to apply the three part *Lambert/Lamy* test to documents that have not yet been filed with the Subcommittee.

### **Order**

Based on the foregoing it is hereby:

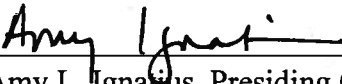
**Ordered:** The Unassented-To Motion For Confidential Treatment And Protective Order is granted in part and denied in part; and,

**Further Ordered:** The document filed under seal and identified as the Applicant's Balance Sheet (un-redacted) shall remain confidential and shall not be disclosed to the public; and

**Further Ordered:** With the exception of Counsel for the Public, the parties to this proceeding who seek to review the Applicant's balance sheet shall sign the attached confidentiality agreement and abide by its terms and conditions; and

**Further Ordered:** To the extent the Applicant's motion seeks confidential treatment or a protective order pertaining to any other documents, the request is denied without prejudice to the filing of a new motion seeking confidential treatment and/or a protective order addressing in detail the reason for the request.

So Ordered this fourth day of June, 2012.

  
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Amy L. Ignatius, Presiding Officer  
Vice Chairman, Site Evaluation Committee

APPENDIX A

THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

DOCKET NO. 2012-\_\_

APPLICATION OF ANTRIM WIND ENERGY, LLC  
FOR A CERTIFICATE OF SITE AND FACILITY

I, \_\_\_\_\_, hereby certify that I am party to the above-captioned proceeding and in connection with my interests therein, I request that I be given access to the following Confidential Information maintained by the Site Evaluation Committee: \_\_\_\_\_. I further certify that I have read the Site Evaluation Committee's protective order issued in the above-captioned matter, understand it and agree to be bound by it. I understand that this Appendix A does not authorize my access to the above Confidential Information until I have signed and delivered it to counsel for Antrim Wind Energy, LLC and until it has been provided to the Site Evaluation Committee by said counsel.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Party to Docket No. 2012-\_\_

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