

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

RE: Application of Antrim Wind, LLC for Certificate of site and)
facility to construct up to 30 MW of wind electric generation in)
the town of Antrim, Hillsborough County, New Hampshire and)
operate the same (SEC Docket 2012-01).)

**MOTION TO COMPEL ANTRIM WIND LLC TO RESPOND TO INDUSTRIAL WIND ACTION GROUP,
INC.'S DATA REQUESTS**

The Industrial Wind Action Group, Inc. ('IWA') respectfully requests that the NH Site Evaluation Committee ('SEC' or 'Committee') compel Antrim Wind, LLC ('Applicant') respond to IWA's Data Requests in the above-captioned proceeding. In support of its motion, IWA states as follows:

1. IWA petitioned to intervene in the above-captioned matter before the SEC. The Committee, through its *Order on Motions to Intervene* dated May 18, 2012, granted IWA permission to fully participate as an intervenor pursuant to RSA 541-A:32, II.

2. SEC Site 202.12 (a) provides "The presiding officer shall authorize data requests in the nature of interrogatories, requests for production of documents, requests for admission of material facts, depositions and any other discovery method permissible in civil judicial proceedings before a state court when such discover is necessary to enable a party to acquire evidence admissible in a proceeding and when such method will not unduly delay the prompt and orderly conduct of the proceeding." In its May 18, 2012 *Report of Prehearing Conference and Procedural Order*, the Committee articulated the schedule and procedure for filing and responding to data requests.

3. In accordance with the Committee's June 4, 2012 *Order On Unassented-To Motion for Protective Order and Confidential Treatment*, the Committee ordered protective treatment of documents described as "certain unredacted financial information in the form of a balance sheet setting forth the assets and liabilities".

4. IWA propounded its data requests on the Applicant on June 1, 2012 per the procedural schedule. In total, twenty-seven data requests were submitted to the Applicant.

5. On June 4, 2012, IWA emailed Attorney Susan Geiger the protective agreement executed by IWA (*Appendix A June 4, 2012 Order*) seeking access to confidential information filed with the Committee. (*Exhibit 1 attached: copy of IWA's signed protective*)

6. The Applicant objected to three IWA data requests (13, 14, and 15), claiming the requested information was "competitively sensitive commercial and financial information". (*Exhibit 2 attached: copy of the protested data requests and responses*)

7. The information sought by IWA is relevant to this proceeding. Access to this information is necessary and appropriate to permit IWA to fully and fairly present its case to the Committee. Similar information was provided to

IWA in other proceedings before the Committee including *Community Energy, Inc. and Lempster Wind, L.L.C. Project* (SEC Docket No. 2006-01), *Granite Reliable Power, LLC* (SEC Docket No. 2008-04) and *Brookfield Renewable Power Inc.* (SEC Docket No. 2010-03).

8. The data requests seek information not cited in the Committee's June 4th protective order and, as such, the requested information is not protected under the order. If the Applicant believed this information deserved protective treatment, it would have addressed it with the Committee months ago. Instead, the Applicant declared unilaterally, with no apparent communication with the Committee, that it would not release the data, despite ample opportunity to act on this matter in a timely and orderly manner.

9. The Applicant has had access to IWA's data requests since June 1. At no time since June 1 did the Applicant take action to address its concerns of confidentiality with IWA or the Committee. IWA made a good-faith effort to obtain responses to its data requests. (*Exhibit 3 attached: copy of correspondence*) Attorney Geiger responded on June 21 that "Antrim Wind stands by its objections to the data requests you cite in your e-mail." IWA has little reason to believe the Applicant will change its position without Committee intervention.

10. In its May 18, 2012 *Report of Prehearing Conference and Procedural Order*, the Committee took pains to inform the parties that "Due to the Subcommittee's scheduling commitments and the statutory time frame, motions to continue to extend time or to reschedule will be disfavored and will only be granted for good cause." The Applicant's withholding of information could lead to undue and avoidable delays in this proceeding. If the Applicant fails to deliver the requested documents to IWA in a reasonable time, IWA may have no choice but to seek enlargement of the schedule for good cause.

11. Finally, in her June 21 email (*Exhibit 3*), Attorney Geiger instructed IWA to make arrangements with Ms. Jane Murray to view the confidential documents at the Committee's Concord office. Such in-person viewings of confidential documents are contrary to the process followed by the Committee in prior proceedings where documents were provided as email attachments. Attorney Geiger is aware of this fact. IWA offers Exhibit 4 (*attached*) that shows correspondence on this very issue involving the Granite Reliable Wind application. In the exhibit, Attorney Patch states "*I talked with Mike Iacopino and clarified with him the intent of the orders on confidential information. Based on my conversation with him I will be sending you the confidential information by email.*" We note that the relevant wording in the protective orders for both Granite Reliable Wind and Antrim Wind is identical. There is no reasonable explanation for why Ms. Geiger would interpret the two orders differently.

12. IWA has requested the other parties to assent to this motion. IWA received assent from the following parties: Counsel for the Public, North Branch Residents' group of intervenors through Richard Block, Kayti Sullivan, Janice Longgood, The Antrim Planning Board, New Hampshire Audubon, and joint-intervenors Robert L. Edwards and Mary E. Allen. The Harris Center for Conservation Education took no position on the motion.

We respectfully ask that the Committee:

A. Compel the Applicant to deliver the information asked for in IWA's data requests 13, 14, and 15;

- B. Clarify for the Applicant that confidential documents on file with the Committee can be sent as email attachments to parties who have executed the protective agreement;
- C. Grant such further relief as it deems equitable and appropriate.

Dated this day of June 22, 2012

INDUSTRIAL WIND ACTION GROUP

By:

A handwritten signature in black ink, appearing to be 'Lisa Linowes', written over a horizontal line.

Lisa Linowes

Industrial Wind Action Group
286 Parker Hill Road
Lyman, NH 03585
(603) 838-6588

cc: Parties to Docket 2012-01

EXHIBIT 1

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

DOCKET NO. 2012-01

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

I, LISA LINDOWES, 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: Unredacted Balance Sheet. 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.

6/4/12
Date

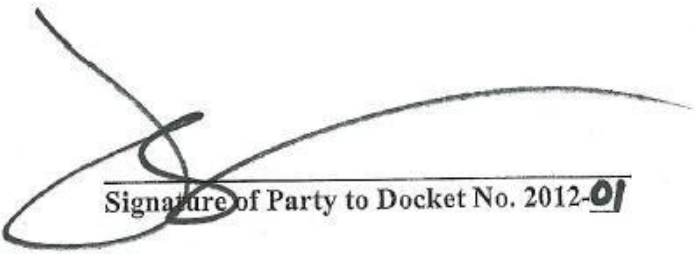

Signature of Party to Docket No. 2012-01

EXHIBIT 2 - DATA REQUESTS AND RESPONSES

Received June 1, 2012
Request No. IWAG 1-13

Date of Response: June 20, 2012
Witness: Jack Kenworthy

REQUEST:

Please provide all spreadsheets and quotes containing expected capital expenditures and labor estimates for the project as reference in footnote 1, Appendix 14B.

RESPONSE: The Applicant respectfully objects to this question as it calls for the disclosure of competitively sensitive commercial and financial information that AWE maintains as privileged confidential.

Received June 1, 2012
Request No. IWAG 1-14

Date of Response: June 20, 2012
Witness: Jack Kenworthy

REQUEST:

Please provide the pro forma schedule for the project?

RESPONSE: Assuming this question refers to the financial pro forma for the Project, the Applicant respectfully objects on the ground that this information is competitively sensitive commercial and financial information that AWE maintains as confidential and privileged.

Received June 1, 2012
Request No. IWAG 1-15

Date of Response: June 20, 2012
Witness: Jack Kenworthy

REQUEST:

Does AWE anticipate entering into a long-term power purchase agreement for the energy and the RECs for this project? Please provide the names of utilities or other entities AWE is negotiating with as well as the dollar amounts per kwh under consideration.

RESPONSE: Yes, AWE anticipates entering into a long-term power purchase agreement for the sale of energy and RECs for the Project. The Applicant respectfully objects to providing the names of utilities that AWE is negotiating with and the potential dollar amounts per kwh on the ground that the information is competitively sensitive commercial and financial information that AWE maintains as confidential and privileged.

EXHIBIT 3

----- Original Message -----

From: Geiger, Susan S.
To: 'Lisa Linowes'
Cc: Michael J. Iacopino ; Roth, Peter ; Goldwasser, Rachel A.
Sent: Thursday, June 21, 2012 11:56 AM
Subject: RE: Antrim Wind confidential data

Lisa - Antrim Wind stands by its objections to the data requests you cite in your e-mail. As the Appendix A document that you have signed indicates, your signature on that document permits you to have access to Antrim Wind's unredacted balance sheet held by the SEC. I am forwarding the signed Appendix A to Ms. Murray in accordance with the terms of the protective order so that she can make arrangements to provide you with access to the document. Susan

From: Lisa Linowes [mailto:lisa@linowes.com]
Sent: Wednesday, June 20, 2012 7:05 PM
To: Geiger, Susan S.
Cc: Michael J. Iacopino; Roth, Peter
Subject: Antrim Wind confidential data
Importance: High

Dear Susan, I am expecting to receive the confidential financial information that Antrim Wind has already provided the SEC.

Antrim Wind has cited objection to responding to IWAG data requests 1-13, 1-14, 1-15 claiming the information is **confidential and privileged**. (see attached)

As you know, I've completed and submitted Appendix A provided with the Committee's June 4th *order on unassented-to motion for protective order and confidential treatment*.

Any information not covered in the Jun 4 cannot be assumed to be privileged.

Since time is of the essence, please advise when I will receive the information requested. If you refuse to release the information, please specify why.

Thank you.
--Lisa

EXHIBIT 4

----- Original Message -----

From: Patch, Douglas L.

To: [Lisa Linowes](#)

Sent: Friday, January 02, 2009 12:10 PM

Subject: RE: Call regarding Financing Questions

Lisa,

I talked with Mike Iacopino and clarified with him the intent of the orders on confidential information. Based on my conversation with him I will be sending you the confidential information by email.

Doug

----- Original Message -----

From: Patch, Douglas L.

To: [Lisa Linowes](#) ; [Roth, Peter](#) ; [Michael J. Iacopino](#)

Cc: [Pip Decker](#) ; [Mark Lyons](#)

Sent: Wednesday, December 31, 2008 3:50 PM

Subject: RE: Call regarding Financing Questions

Mike,

Can you help with the process for Lisa being able to review the confidential documents ? The December 30 order says that we are to allow her "access to the confidential, commercial and financial information" "under the terms and conditions set forth in the Agreement and in the aforementioned orders". The November 4 order talks about "parties being afforded access to the confidential information" and says "the parties shall not make copies of such information or use the information for purposes other than the preparation for and conduct of the proceedings in this docket." Am I reading this correctly that the confidential information is to be viewed at the Committee office by the parties who are approved, not copied and sent to them ? Please advise. Thanks.

Doug

From: Lisa Linowes [<mailto:lisa@linowes.com>]

Sent: Wednesday, December 31, 2008 2:28 PM

To: Patch, Douglas L.; Roth, Peter; Michael J. Iacopino

Cc: Pip Decker; Mark Lyons

Subject: Re: Call regarding Financing Questions

Doug, thank you for your e-mail. Friday works for me.

I just received the notice of order yesterday permitting IWA access to the confidential financial information. Would you be able to send me via e-mail the documents submitted to the SEC?

Thank you.

--Lisa Linowes