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July 5, 2012

Via Hand Delivery and Electronic Mail

Ms. Jane Murray, Secretary
New Hampshire Site Evaluation Committee
N.H. Department of Environmental Services
29 Hazen Drive
Concord, NH 03302-0095

***Re: Docket 2012-01 - Application of Antrim Wind Energy, LLC
for a Certificate of Site and Facility for a Renewable Energy Facility***

Dear Ms. Murray:

Enclosed for filing with the New Hampshire Site Evaluation Committee in the above-captioned matter please find an original and 9 copies of Applicant's Response to Motion of Counsel for the Public to Compel.

Please contact me if there are any questions about this filing. Thank you.

Very truly yours,


Susan S. Geiger

Lawrence A. Kelly
(Of Counsel)

Enclosures

cc: Service List, excluding Committee Members
Clark A. Craig, Jr. (by first class mail)
899020_1

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2012-01

Re: Antrim Wind Energy, LLC

APPLICANT'S RESPONSE TO
MOTION OF COUNSEL FOR THE PUBLIC TO COMPEL

NOW COMES Antrim Wind Energy, LLC ("AWE" or "the Applicant"), by and through its undersigned attorneys, and responds to the Motion of Public Counsel to Compel ("Motion to Compel") by stating as follows:

1. Most of the data requests that are the subject of Public Counsel's Motion to Compel seek competitively sensitive, commercial and financial information that is highly confidential. In support of his Motion, Public Counsel argues that the requested information is relevant to the issue of the Applicant's financial and managerial capabilities. AWE disagrees. AWE has indicated that it will finance, construct and operate the Antrim Wind Project by using non-recourse project finance and third party agreements, which is common in the electric generation industry, and which has been accepted by this Committee. *See, e.g., Application of Granite Reliable Power, LLC*, Decision Granting Certificate of Site and Facility with Condition (July 5, 2009) at 31-32. The Presiding Officer in the instant docket has recognized the Applicant's intention to use this form of project finance, and has noted that the "important" or relevant question with respect to whether the Applicant will have the financial capability required by RSA 162-H is the Applicant's "near-term prospect for project financing," not specific financial information such as what assets the Applicant owns today. *Re: Application of Antrim Wind Energy, LLC*, Order on Unassented-to Motion for Protective Order and Confidential Treatment

(June 4, 2012) at 3-4. Thus, to the extent that Public Counsel seeks specific financial information concerning AWE (e.g. information related to the development of a business plan or pro forma for the project), or AWE's members' finances, that information is irrelevant to the issue of whether AWE has the financial capability to assure construction and operation of the Antrim Wind Project as required by RSA 162-H:16, IV(a). Those requests, therefore, may properly be denied, because such irrelevant information may be excluded from the record of this proceeding. *See* RSA 541-A:33, II.

2. Paragraph 7 of Public Counsel's Motion indicates that data request 5 seeks salary histories "for the Applicant's two principals." Public Counsel asserts (in paragraph 8 of his Motion) that this salary information is relevant to the issue of financial and managerial capability. For the reasons set forth above in paragraph 1 of this Response, the Applicant objects to this request on the ground of relevance. In addition, despite the wording of the Motion, the referenced data request actually seeks the salary histories of "Mr. Kenworthy and Mr. Soininen," neither of whom are the Applicant's principals. Thus, their salary histories have no bearing on AWE's financial or managerial capabilities. Because the presiding officer is authorized by RSA 541-A:33, II to exclude irrelevant and immaterial evidence from the record of this proceeding, the Applicant should not be compelled to respond to this data request.

3. Public Counsel's data request 9 seeks Reed & Reed's constructability analysis, cost estimates and project schedules. The Applicant has provided the proposed project schedule (in Appendix 7 to the Application) and has responded to the request for constructability analysis by explaining that no document containing that analysis exists. With respect to the request for cost estimates, the Applicant objects on the ground that the information is irrelevant to the issue of the Applicant's financial and managerial capability, for the reasons set forth in paragraph 1,

above. In addition, the Applicant objects on the ground that this information is competitively sensitive and proprietary to both AWE and Reed & Reed. AWE has not selected Reed & Reed as the balance of plant (“BOP”) contractor, and will solicit competitive bids from multiple contractors before awarding a BOP contract. Disclosing these estimates would be harmful to Reed & Reed and will negatively affect AWE’s ability to obtain truly competitive bids. Notwithstanding these objections, and in recognition of Public Counsel’s important statutory role in this proceeding, the Applicant agrees to provide Counsel for the Public, subject to an appropriate protective order, Reed & Reed’s estimates of the cost to construct the project. A Motion for Protective Order will be submitted for this information.

4. In data request 12, Public Counsel seeks details of all activities in which the Applicant has been engaged to obtain an “Off-Take Agreement” and documents relating to those activities. The Applicant has responded to the request by describing these activities but continues to object to providing documents related to those activities. Activities related to an “off-take” agreement involve highly confidential, sensitive commercial information, which, if publicly disclosed, would be very damaging to AWE and to the parties with whom it is negotiating. As such, details and documents relating to the negotiation of “Off-Take” or power purchase agreements are not discoverable. *See Public Service Company of New Hampshire*, 95 NH PUC 579, 589 (2010) (motion to compel information related to PPA negotiations denied; Public Utilities Commission could conceive of no circumstances in which such negotiation information would be deemed admissible.) In view of the foregoing, the request for this information should be denied.

5. Public Counsel’s data request 14 seeks documents relating to a business plan or pro forma for the project. The Applicant objects on the ground that the pro forma financial model is irrelevant to the Applicant’s financial capabilities for the reasons discussed in paragraph 1,

above. The Applicant further objects on the ground that this information is confidential and on the ground that providing *any document* referencing the business plan or pro forma would be onerous. Notwithstanding this objection, and in recognition of Public Counsel's important statutory role in this proceeding, the Applicant agrees to provide only to Public Counsel the project's pro forma financial model, subject to an appropriate protective order. A Motion for Protective Order will be submitted for this information.

6. Public Counsel's data request 16 seeks documents relating to agreements between the Applicant, Westerly Wind and Mr. Cofelice. The Applicant objects on the ground that these agreements contain sensitive commercial information and are covered by confidentiality provisions. In addition, the Applicant objects on the ground that this information is irrelevant to the issue of the Applicant's financial and managerial capabilities. Notwithstanding these objections, and in recognition of Public Counsel's important statutory role in this proceeding, the Applicant agrees to provide only to Public Counsel, subject to an appropriate protective order, copies of the Westerly Wind, LLC agreement to which Mr. Cofelice is a party, and Mr. Cofelice's services agreement with Westerly Wind, LLC, with limited redactions relating to base salary and compensation. A Motion for Protective Order will be submitted for these documents.

7. Public Counsel's data request 18 seeks, among other things, a document relating to meetings or teleconferences held between Mr. Pasqualini and the Applicant, Mr. Kenworthy, Mr. Soininen or any other person or associated with or employed by the Applicant since January 1, 2009. The Applicant objects to providing this document on the ground that it contains sensitive commercial information. In addition, the Applicant objects on the ground that this information is irrelevant to the issue of the Applicant's financial and managerial capabilities for the reasons discussed in paragraph 1, above. Notwithstanding these objections, and in recognition of Public

Counsel's important statutory role in this proceeding, the Applicant agrees to provide only to Public Counsel, subject to an appropriate protective order, a redacted document¹ relating to a June 5, 2012 presentation made by AWE to Mr. Pasqualini. A Motion for Protective Order will be submitted for this document.

8. Public Counsel's data request 23 seeks information concerning Professor Gittell's income derived from producing reports and papers for-hire on an annual basis relating to renewable or "green industry" or the economic effects thereof, including the sources of such income for the past 5 years. Public Counsel asserts in paragraph 20 of the Motion to Compel that this information is "important to the issue of the effects on the orderly development of the region and relevant to the question of possible bias by the witness." The Applicant objects to this request. The amount of Dr. Gittell's income, and the sources thereof, have absolutely no relevance to the issue of the Antrim Wind Project's effect on the orderly development of the region. In addition, Dr. Gittell has submitted an extensive, 19 page resumé with his prefiled testimony. Thus, to the extent that Public Counsel seeks information concerning possible bias on the part of Dr. Gittell, that information may be ascertained from Dr. Gittell's extensive resumé. Lastly, in an effort to comply with Public Counsel's request, the Applicant asked Dr. Gittell if he would be willing to provide the requested information, and Dr. Gittell indicated that he would not.

WHEREFORE, the Applicant respectfully requests that the Committee:

A. Deny Counsel for the Public's Motion to Compel insofar as it seeks responses to the following: Data Request 5 (salary histories of Messrs. Kenworthy and Soininen); Data Request

¹ The redactions relate to negotiation information which is not discoverable. *See Public Service Company of New Hampshire*, 95 NH PUC 579, 589 (2010).


12 (details concerning an "Off-Take Agreement"); and Data Request 23 (Dr. Gittel's "green industry" income for the past 5 years);

B. Accept the Applicant's responses to Public Counsel's Data Requests 9, 14, 16 and 18 as set forth in paragraphs 3, 5, 6 and 7, above;

C. After reviewing the Applicant's forthcoming Motion for Protective Order, issue an appropriate order that protects the information described in paragraphs 3, 5, 6 and 7 above from public disclosure and from disclosure by Counsel for the Public without a further order from the Committee; and

D. Grant such additional relief as it deems appropriate.

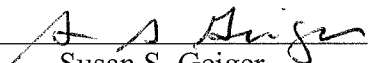
Respectfully submitted,
Antrim Wind Energy, LLC
By its Attorneys,
Orr and Reno, P.A.

By: 
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Dated: July 5, 2012

Certificate of Service

I hereby certify that on this 5th day of July, 2012, a copy of the foregoing Objection was sent by electronic mail or U.S. Mail, postage prepaid, to persons named on the Service List of this docket, excluding Committee Members.


Susan S. Geiger