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July 6, 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 North Branch Residents Intervenor Group's Motion to Compel Responses to Data Requests.

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)
899400_1

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2012-01

Re: Antrim Wind Energy, LLC

APPLICANT'S RESPONSE TO
NORTH BRANCH RESIDENTS INTERVENOR GROUP'S
MOTION TO COMPEL RESPONSES TO DATA REQUESTS

NOW COMES Antrim Wind Energy, LLC ("AWE" or "the Applicant"), by and through its undersigned attorneys, and responds to the Motion to Compel filed by the North Branch Residents Intervenor Group ("the Block Group") by stating as follows:

1. **Block Group Data Request No. 1:** This data request seeks the Applicant's on-site wind resource data, and the Applicant's analysis of this data and the specific conditions in Antrim for this project. The Applicant objects to providing this information. AWE's on-site wind resource data and analysis of it and site-specific conditions are highly confidential, sensitive commercial and technical information which constitute trade secrets under RSA 350-B:1, IV. *See Application of Groton Wind, LLC*, Order on Pending Motions and Further Procedural Order (Dec. 14, 2010) at 2 ("results of various wind study surveys performed by the Applicant...is in the nature of a trade secret.") AWE has expended significant resources to develop this information and does not publicly disclose it. This Committee has determined that disclosure of this information would disadvantage an Applicant "by allowing competitors to obtain, at no cost, the Applicant's trade secrets." *Id.* The Committee has also found that "[t]here is little if any public interest in the disclosure of this type of information and the threat of

financial harm to the Applicant is great.” *Id.* at 2-3. Moreover, site-specific wind data is central to negotiations for “off-take” or power purchase agreements (“PPA”) and pricing decisions. This information is 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.)

While the Motion alleges that this technical information “is necessary and appropriate to permit the Block Group...to fully and fairly present its case to the Committee,” the Motion does not provide any explanation for this statement. For example, the Motion does not indicate that the Block Group is qualified to evaluate this information or why the Block Group needs this information to advocate for its interests in this matter. In these circumstances, the Applicant should not be compelled to disclose this sensitive proprietary information, even subject to a protective order.

2. Block Group Data Request No. 2: This data request asks the Applicant to identify the number of residences within a two mile radius of the Antrim Wind Project. The Block Group is also requesting that the number of residents already identified by the Applicant within a one-half mile radius and a one mile radius of the project be further identified as year-round or seasonal. In support of its request, the Block Group asserts that it is appropriate to know the population density within a two mile radius because “setback distances from 3 MW turbines of up to several miles [are] being suggested in various countries.” The Applicant objects to this request. AWE submits that it has demonstrated that there are no unreasonable adverse effects on the closest abutters to the project, i.e. those that are one-half mile away. AWE has gone further and has voluntarily

mapped the number of residences within one mile of the proposed turbine locations. This was accomplished by manually mapping the residences from high quality aerial imagery and “ground truthing” them. Expanding upon this considerable effort, as requested by the Block Group, would be onerous and unnecessary. The Block Group’s assertions concerning setbacks of up to several miles being “suggested in various countries” is unsubstantiated and irrelevant to the instant proceeding. Their two mile radius request is therefore arbitrary and should be denied.

With respect to the seasonal versus year-round residence distinction requested by the Block Group, the Applicant notes that this distinction has not been made in its mapping. All known structures have been mapped without regard to whether they are seasonal or year-round. This provides a consistent treatment of all structures as year-round and is therefore conservative and reasonable.

3. Block Group Data Request No. 7: This data request seeks a list and appropriate documentation for all meetings held between AWE and various officials of the Town of Antrim, whether public or in private. The Block Group argues that this data is necessary to help determine how the various permit applications, operating agreement, and PILOT agreement were effected, and how the Applicant has conducted business in Antrim. The Applicant objects to this data request on the ground of relevance. Information concerning meetings relating to permit applications, the Town of Antrim Agreement and the PILOT agreement are not relevant to the instant proceeding. Moreover, this request is onerous. Documentation of public meetings with town officials are public records, which the Block Group may obtain directly from the Town of Antrim. Requiring the Applicant obtain this information would be unduly burdensome.

Notwithstanding this objection, AWE is seeking a list of the non-public meetings from the Town, which the Town has agreed to provide. This list will be provided once AWE receives it.

4. Block Group Data Request No. 8: This data request seeks information concerning the negotiation of the operating Agreement between the Town of Antrim Selectboard and AWE. The Block Group has withdrawn this request on the condition that AWE provides the first draft of the proposed agreement as it was initially submitted to the Selectboard. The Applicant agrees to this condition and will provide the original/first draft of the agreement.

5. Block Group Data Requests No. 9 and 10: These data requests seek sound data for specific locations, including both “audible and subsonic projections for night time, day time, and four seasonal variations.” The Block Group’s Motion indicates that this question seeks information to determine whether the Applicant has tested “in the true subsonic range of the audio spectrum.” The Applicant responds by stating that it believes that its sound studies are appropriate and adequate to support a determination that the project will not have an unreasonable adverse effect due to sound. To the extent that this question seeks additional sound surveys or analysis of these two locations, the Applicant objects on the basis that such additional information is unnecessary because expected sound levels at low frequency octave bands (31.5, 63, 125 Hz) at these two locations (which are 6,000 feet and 7,500 from the nearest turbine) will be far below any thresholds for perceptible vibration or annoyance according to ANSI standards S12.2 or S12.9 Part 4.

6. Block Group Data Request No. 15: This data request seeks “50mm simulations” for the 11” x 17” panoramas that are part of the Visual Impact Assessment (“VIA”). The Applicant responds by indicating that Figure 9A of the VIA does contain both single frame 50mm images for Gregg Lake Town Beach (Figures 10A and 10B) as well as a panorama simulation for that location (Figures 10C and 10D). At the technical session on June 29, 2012, the Applicant agreed to provide the six individual still photos used to create the panorama photos.

7. Block Group Data Requests No. 18, 19, 20 and 21: These data requests seek additional visual simulations of winter views from four locations “without haze of the proposed turbines.” The Block Group asserts that the photo simulations contained in the VIA are not complete and that since winter views are not addressed in the VIA, “this is a reasonable request to address the concerns of year-round residents.” Motion to Compel, ¶ 12. The Applicant objects to this request. First, AWE notes that Visual simulations (during leaf-on season) from some of these locations are provided in the VIA. The new locations requested by the Block Group are private residences – not areas that are frequented by the public at large. Second, the Applicant believes that its VIA is adequate and appropriate to support a determination that the project will not have an unreasonable adverse effect on aesthetics. Therefore, additional visual simulations are unnecessary as they would be unduly repetitious of the existing simulations. Because unduly repetitious data is excludable from the record of this proceeding, these requests should be denied. *See* RSA 541-A:33, II. Third, the Applicant cannot provide winter views because it does not have the imagery for such simulations and cannot obtain any new imagery that would be suitable for such simulations. Lastly, the hazing effect is not

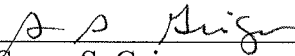
material to the resulting image. This is because the atmospheric effects were set at a very low level to match the clear weather conditions on the days that the baseline photos were taken. Therefore, because the extremely low level hazing effect does not diminish the clarity of the simulated turbines in any view, complying with the request to eliminate hazing would serve no useful purpose.

WHEREFORE, the Applicant respectfully requests that the Committee:

A. Deny the Block Group's Motion to Compel responses to data requests 1, 7 (to the extent it seeks public information that may be obtained by the Block Group directly from the Town of Antrim), 9, 10, 18, 19, 20 and 21; and

B. Grant such further 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 6, 2012

Certificate of Service

I hereby certify that on this 6th day of July, 2012, a copy of the foregoing Response 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