

**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**

July 11, 2012

**Order on Motions to Retain Consultants
Filed by Counsel for the Public**

Procedural History

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 maximum nameplate capacity of 3MW for a total maximum nameplate capacity of 30MW, along with associated facilities, including a substation, distribution lines, and related buildings and structures.

On April 30, 2012, the Attorney General appointed Senior Assistant Attorney General Peter C.L. Roth as Counsel for the Public in accordance with RSA 162-H: 9. On May 7, 2012, a prehearing conference was held. As a result of the prehearing conference, a procedural order was issued on May 18, 2012. The procedural order set forth a schedule with discovery deadlines and technical sessions to allow the parties to conduct discovery. As part of the procedural order, Counsel for the Public was required to disclose witnesses and file testimony on or before July 20, 2012.

On June 18, 2012, Counsel for the Public filed a series of motions to retain consultants pursuant to RSA 162-H: 10, V. Counsel for the Public in his motions, seeks to retain the following consultants:

- Trevor Lloyd Evans to analyze the impact of the proposed facility on avian species;
- Gregory C. Tocci and Cavanaugh Tocci Associates to analyze the sound impacts from the proposed facility;
- Jean Vissering and Vissering Landscape Architecture to analyze the visual impact of the proposed facility;

- Deloitte Financial Advisory Services LLP to analyze the financial, technical and managerial capability of the Applicant to construct and operate the proposed facility in accordance with the terms and conditions of a certificate.

The Applicant filed a response to the motions on June 22, 2012. The Applicant does not object to the motion to retain Trevor Lloyd Evans. However, the Applicant objects to certain portions of the remaining motions. While the Applicant does not object to any of the requested consultants being retained, the Applicant does object to the proposed scope of work, the costs sought to be approved, and payment by retainer.

Standard of Review

RSA 162-H:10, V provides that the “site evaluation committee and counsel for the public shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter . . .” The costs of such studies and investigations are to be assessed to the Applicant in an amount approved by the Committee. The standard of review is whether the study or investigation is reasonable and “necessary or appropriate.” *Id.*

What is reasonable, necessary or appropriate must be considered within the scope of the purpose of the siting statute. The statute recognizes that “it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire.” RSA 162-H: 1. In achieving this goal, the statute requires the Committee to “ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.” *Id.*

The statute also sets out a hybrid mechanism for determination by the Committee. The Committee is required to hold public informational hearings, and receive public comment on proposed energy facilities. *See*, RSA 162-H: 10. In addition, the Committee incorporates the work of various state agencies that might otherwise have separate and distinct jurisdiction over aspects of the proposed facility. *See*, RSA 162-H: 6-a. The Committee is also required to examine a proposed facility thorough the lens of an adjudicative proceeding held in accordance with RSA 541-A, the administrative procedure act. *See*, RSA 162-H: 10, II.

The statute provides a procedure by which the Committee may determine whether a proposed facility comports with the statutory requirements and the findings that must ultimately be made by the Committee. *See*, RSA 162-H: 16. Under this rubric it is reasonable, necessary and appropriate that assertions contained within the Application be tested. In some cases, it is reasonable to try to replicate the results espoused by the Applicant or its consultants. In other cases, examination of the methods used by the Applicant and its consultants may be required. In some cases, additional or entirely new studies may be required. The siting of large scale energy facilities can be complicated and each area of impact should be thoroughly addressed in a reasonable manner through the adjudicative process. In most cases, the public interest will require that necessary and appropriate experts and consultants be retained to assist Counsel for the Public, and ultimately the Committee, in addressing such impacts.

Analysis

Trevor Lloyd Evans

Counsel for the Public wishes to retain Trevor Lloyd Evans as a consultant with expertise in the area of the impact of the proposed project on avian species and bats. Mr. Lloyd Evans is the senior staff biologist for the Manomet Center for Conservation Sciences. Mr. Lloyd Evans has testified before the Committee on prior occasions. The effect of wind turbines on avian species and bats is an area of concern in the planning and certificating of every wind powered facility. There is no objection to the retention of Trevor Lloyd Evans as a consultant to Counsel for the Public. Mr. Lloyd Evans charges \$120 per hour for his services. Counsel for the Public estimates that the total cost of services and expenses to be provided by Mr. Lloyd Evans will be no more than \$12,000.

Counsel for the Public's motion to employ Mr. Lloyd Evans will be granted to the extent that the cost to the Applicant shall not exceed \$12,000. Costs and expenses to the extent of \$12,000 shall be paid by the Applicant as billed by Mr. Lloyd Evans.

Gregory C. Tocci and Cavanaugh Tocci Associates

Counsel for the Public seeks to retain Gregory C. Tocci and Cavanaugh Tocci Associates to assist in the analysis of the noise impacts that may be expected from the proposed facility. Counsel for the Public notes that some of the turbines in the proposed facility will be located less than one mile from a number of residences and community receptors. Counsel for the Public also asserts that the proposed project would be one of the first wind projects in the nation where 3 MW turbines were sited within less than a mile of residences.

Mr. Tocci is the president and founding partner of Cavanaugh Tocci Associates. He holds a bachelor's degree from Tufts University and a master's degree from the Massachusetts Institute of Technology. He is a professional engineer, registered in Massachusetts and Rhode Island. Mr. Tocci and Cavanaugh Tocci Associates have been retained as sound experts on numerous projects and have conducted environmental noise impact assessments for residential, commercial and industrial developments. Counsel for the Public asks that the Committee approve the sum of \$33,300 for services to be provided by Mr. Tocci and Cavanaugh Tocci Associates, with a retainer of \$15,000 to be paid in advance.

The Applicant does not object to the request to retain Mr. Tocci, nor does the Applicant object to Mr. Tocci's qualifications. However, the Applicant does object to the scope of services sought to be provided by Mr. Tocci and to the cost to retain Mr. Tocci, including the payment of a retainer fee. The Applicant believes that the scope of services is duplicative and unnecessary to the extent that Mr. Tocci proposes to conduct additional ambient sound monitoring during the leaf-on season. The Applicant also objects to the proposal to conduct leaf-off season ambient sound monitoring because such monitoring may cause a delay in the scheduled proceedings. The Applicant argues that the leaf-off season commences in October, 2012. The adjudicatory proceeding in this matter is scheduled for September 10 through September 14, 2012. In addition, the Applicant asserts an objection to the requirement of a retainer payment. Finally, the

Applicant objects to the overall cost of hiring Mr. Tocci, and suggests that the proposed cost is 75% greater than what the Applicant expended for its own sound analysis.

Having reviewed the motion and the objection, I find the Mr. Tocci and Cavanaugh Tocci Associates are qualified to perform the services proposed. While the Applicant objects to the overall cost for the scope of services, I note that the additional costs are necessary in order to properly review the work done by the Applicant's consultant. The Applicant's consultant performed sound monitoring at five locations. *See*, Application, Appendix 13 A, p. 5-1 – 5-2. Additional leaf-on sound monitoring may be appropriate in this case. However, I find that the request to perform leaf-off monitoring is unnecessary and is likely to unduly interfere with the prompt and orderly disposition of this Application. Leaf-off monitoring will exceed the statutory timeframe in which the Committee must determine to either grant or deny a Certificate in this matter. Therefore, I will approve the request to retain Mr. Tocci and Cavanaugh Tocci Associates and the costs therefore, with the exception of \$8,100.00 that was reserved for leaf-off ambient sound monitoring. If leaf-off monitoring becomes a condition to a Certificate, the Committee may revisit Counsel for the Public's request in this regard.

I will also approve the request that a retainer of \$15,000.00 be paid in advance. The Applicant is a relatively new venture with an unproven financial record. The requirement of a retainer is reasonable. However, the consultant shall be required to document the charges against the retainer with periodic statements that shall be issued at least monthly and filed with the Committee.

The motion, therefore, is granted in part and denied in part. Counsel for the Public may employ Mr. Tocci and Cavanaugh Tocci Associates to perform the scope of services set forth in the motion with the exception of leaf-off ambient sound monitoring. A sum, not to exceed \$25,200.00, is approved as an expense to be borne by the Applicant in this matter. In addition, the Applicant shall pay a retainer in the amount of \$15,000.00 in advance of the services. Once the retainer is exhausted the Applicant shall pay the consultant as invoiced.

Jean Vissering and Jean Vissering Landscape Architecture

Counsel for the Public seeks to retain Jean Vissering and Jean Vissering Landscape Architecture of Montpelier, Vermont, to assist in the analysis of the visual impacts of the proposed project. Counsel for the Public points out that the proposed project will include some of the tallest free standing structures in the State of New Hampshire. The size of the structures and their positioning along 2.5 miles of relatively low elevation ridge line raises concerns regarding the visual impact that the project may have on the surrounding area.

Ms. Vissering holds a bachelors of science degree in landscape architecture and a master's of science degree in landscape architecture. She has been retained to assess the visual impact of various wind energy projects in the Northeast. She has previously testified before the Committee concerning the visual impacts of the Granite Reliable Wind Park located in Coos County, New Hampshire. Counsel for the Public asks that the Committee approve the sum of \$18,020.00 for services to be provided by Ms. Vissering. The scope of work includes the review of documents, a site visit and field assessment, preparation of prefiled testimony, responses to

Applicant's requests, appearance at technical sessions, supplemental testimony and appearance at the adjudicative hearing. In addition, Ms. Vissering will be asked to perform view-shed analysis, which may include photographic simulations. Ms. Vissering's photographic simulations may reproduce the simulations provided by the Applicant and may involve additional locations.

The Applicant does not object to the request to retain Ms. Vissering, nor does the Applicant object to Ms. Vissering's qualifications. However, the Applicant does object to the scope of services sought to be provided by Ms. Vissering and the overall cost to retain Ms. Vissering. The Applicant objects to the scope of services proposed for Ms. Vissering as it includes a comprehensive visual assessment. The Applicant argues that this is duplicative of the study already undertaken by the Applicant's consultants. The Applicant also argues that additional photographic simulations are duplicative and unnecessary. The Applicant asserts that RSA 541-A: 33, II provides a basis for the Committee to exclude unduly repetitious evidence. The Applicant also argues that the cost proposed to retain Ms. Vissering is unreasonably high. The Applicant argues that the fees for Ms. Vissering will exceed the costs of the visual impact studies performed by the Applicant's consultant by several thousand dollars. The Applicant specifically argues that the sum of \$8,900.00 associated with additional view shed analysis and photographic simulations should not be approved.

Having reviewed the motion and the objection, I find that Ms. Vissering is qualified to perform the services proposed. I also find that the services proposed by Counsel for the Public are appropriate and necessary. Some aspects of Ms. Vissering's services, in particular the view-shed analysis, may be duplicative. However, replication of the study undertaken by the Applicant's consultant may be appropriate as there are a myriad of factors that contribute to the visual impact of a wind turbine project.

It is appropriate and necessary for Counsel for the Public to retain a qualified consultant to review the visual impact assessment submitted by the Applicant and her expertise will assist the Committee in determining whether there are adverse visual impacts associated with the proposed project. In coming to this conclusion, it is noted that the proposed wind turbines will stand at 499 feet tall. They will be positioned on a ridge line that, at its highest elevation, is approximately 1,600 feet. The size of the proposed structures in and of itself serves as a caution to the Committee that the visual impacts must be closely examined. Therefore, I will approve the request to retain Ms. Vissering. Counsel for the Public is authorized to retain her services in an amount not to exceed \$18,020.00. Costs and expenses to the extent of \$18,020.00 shall be paid by the Applicant as billed by Ms. Vissering.

Deloitte Financial Advisory Services, LLP

Counsel for the Public seeks to retain the services of Deloitte Financial Advisory Services, LLP (Deloitte). Counsel for the Public seeks to retain Deloitte to assist him in studying the financial, technical and managerial capability of the Applicant. Counsel for the Public asserts that the Applicant is inexperienced in constructing and operating commercial scale wind projects. He points out that the proposed project presently does not have financing or equity capital and that the proposed project does not have a power purchase agreement. Counsel for the Public also argues that the Applicant seeks a Certificate from the Committee on the basis that it

will contract with various unknown third parties for the development, construction, and operation of the project. Counsel for the Public argues that in at least one prior docket, a similarly situated applicant was ultimately unsuccessful in obtaining financing, causing that project to be sold to an entity that could build the project with its own assets. Counsel for the Public asserts that Deloitte will be instrumental in providing important information regarding the financial viability of the project and the capability of the Applicant. Counsel for the Public asks that the Committee approve the total sum of \$75,000.00 for the services to be provided by Deloitte. Counsel for the Public also seeks a retainer of \$30,000.00 for the purposes of retaining Deloitte. It is noted that the services proposed to be provided by Deloitte do not include compensation for live testimony.

The Applicant does not object to the request to retain Deloitte as a consultant, nor does the Applicant object to the qualifications of Deloitte to provide the services sought by Counsel for the Public. However, the Applicant does object to the proposed cost for those services. The Applicant argues that the cost of \$75,000.00 is unreasonably high. The Applicant argues that the services are incomplete in that they do not include live testimony/cross-examination. The Applicant points out that in a prior proceeding (Granite Reliable Power, LLC), Counsel for the Public requested a similar amount of funding but the services to be provided in that case included supplemental prefiled testimony and live appearance and cross-examination at the adjudicative hearings. The Applicant also objects to payment by retainer.

Having reviewed the motion and objection, I find that Deloitte is qualified to perform the services proposed. I also find the scope of services proposed by Deloitte to be adequate. If additional services are necessary in the future, Counsel for the Public shall first consult with the Applicant and attempt to come to an agreement for the cost of such additional services. I specifically find that the services proposed to be provided by Deloitte are necessary for the appropriate investigation by the Committee into the financial, managerial and technical capabilities of the Applicant to site, construct and operate the proposed facility. At the time of the filing of the Application, the Applicant did not have a financing package in place and had not yet made a final selection for the turbines that will be used at the proposed facility. The Committee is aware that a turbine manufacturer will usually provide operational services throughout the construction phase and through the beginning of the operation phase of an industrial scale wind energy facility. In this case, the Applicant comes before the Committee without a financing package, without a final turbine selection and without a final determination as to the manner in which the proposed facility will be operated. Under these circumstances, the services proposed to be provided by Deloitte are necessary to assist Counsel for the Public and the Committee in pursuing a determination of the financial, managerial and technical capabilities of the Applicant.

The motion of Counsel for the Public to retain Deloitte will be granted and the Applicant will be directed to pay for the services provided by Deloitte in accordance with the proposed engagement letter attached to Counsel for the Public's motion. For the same reason discussed above, the requirement that the Applicant provide a retainer is appropriate. However, the consultant shall be required to document charges against the retainer with periodic statements that shall be issued at least monthly and filed with the Committee.

Conclusion

Counsel for the Public has made an appropriate request for authority to retain consultants. With the exception of the leaf-off ambient sound monitoring, the proposed consultants and their scope of services are necessary and will assist the Committee in exploring the impacts of the proposed facility and ultimately in determining whether to grant or deny a certificate. In addition, the proposed cost for the consultant services is reasonable. The requirement of a retainer payment is also reasonable. Therefore, the motion to employ Trevor Lloyd Evans is granted. The motion to employ Jean Vissering and Jean Vissering Landscape Architecture is granted. The motion to employ Deloitte is granted and the motion to employ Greg Tocci and Cavanaugh Tocci Associates is granted in part and denied in part.

Order

Based on the foregoing it is hereby:

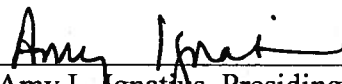
Ordered: The motion of Counsel for the Public to employ Trevor Lloyd Evans is granted and the Applicant shall pay for the services of Mr. Lloyd Evans, as invoiced, in an amount not to exceed \$12,000.00; and,

Ordered: The motion of Counsel for the Public to employ Jean Vissering and Jean Vissering Landscape Architecture is granted and the Applicant shall pay for the services of Ms. Vissering, as invoiced, in an amount not to exceed \$18,020.00; and,

Ordered: The motion of Counsel for the Public to employ Gregory C. Tocci and Cavanaugh Tocci Associates is granted in part and denied in part. The Applicant shall pay for the services of Mr. Tocci in an amount not to exceed \$25,200.00. Leaf-off ambient sound monitoring shall not be performed unless required by further order of the Committee. The Applicant shall pay a retainer of \$15,000.00 to Gregory C. Tocci and Cavanaugh Tocci Associates, though Counsel for the Public shall provide a periodic statement accounting for charges against the retainer on a monthly basis; and,

Ordered: The motion of Counsel for the Public to employ Deloitte Financial Advisory Services, LLP, is granted. The Applicant shall pay for the services of Deloitte Advisory Services, LLP in an amount not to exceed \$75,000.00. The Applicant shall provide a retainer in the amount of \$30,000.00 to Deloitte Financial Advisory Services, LLP and Deloitte Financial Advisory Services, LLP, through counsel for the Public shall provide a periodic statement accounting for charges against the retainer on a monthly basis.

So Ordered this 11th day of July, 2012.



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