

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**

October 2, 2012

**SUPPLEMENTAL ORDER REGARDING DISCOVERY AND  
DENYING MOTION FOR RECONSIDERATION**

**I. Background and 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 ten (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.

Consistent with prior scheduling orders the parties to this docket undertook a course of discovery that included the promulgation of data requests (interrogatories) and technical sessions with identified witnesses. During the course of discovery approximately twenty-two pleadings were filed with the Subcommittee seeking or objecting to the production of discovery and/or confidential treatment and protective orders. On August 22, 2012, we issued an Order on Outstanding Motions resolving the vast majority of the discovery disputes. However, the August 22, 2012, order did not address a Motion by Industrial Wind Action Group (IWAG) to Compel Antrim Wind to Respond to Technical Session Data Requests and the Applicant's objection thereto.

Additionally, on August 30, 2012, IWAG filed a motion seeking reconsideration of parts of the August 22, 2012, order. The Applicant objected on September 10, 2012. The purpose of this supplemental order is to resolve IWAG's motion to compel the technical session discovery and to deny IWAG's motion for reconsideration.

**II. IWAG's Motion to Compel**

IWAG requests that we compel the Applicant to provide answers to the following requests raised at the technical session held on July 3, 2012:

TS 1-3: Please provide a copy of the option agreement that would permit the applicant the ability to purchase the land upon which the substation is to be sited.

TS 1-9: Please provide a spread sheet or similar data aggregation explaining the statement that “Antrim Wind has spent over \$1.85 million to-date on development activities with over 45% being spent in New Hampshire on services such as professional services, surveying, legal, and project impact analysis.” (Application of Antrim Wind Energy at p. 102)

TS 1-15 and TS 1-16: Please provide the Renewable Energy Certificate (REC) price that the applicant requires for the proposed project to be financially viable. Please provide the price for power under a power purchase agreement that will be necessary for the applicant to make the proposed project financially viable.

TS 1-17: Please provide all scenario pro formas for the proposed project.

TS 1-18: Please provide the P90 capacity factor.

TS 1-25: Please provide the net capacity factors running at higher cut-in speeds over the long term.

TS 1-48: Please provide the ISO-NE Draft Feasibility Study.

**A. TS 1-3, TS 1-9, TS 1-17**

Requests TS 1-3, TS 1-9, and TS 1-17 involve information that was requested as discovery in other pleadings. These requests have been ruled on in the Order on Outstanding Motions dated August 22, 2012 and there is no need to re-visit those rulings in this order.

**B. TS 1-15 and 1-16 (Renewable Energy Certificate and Power Purchase Price)**

In TS 1-15 and TS 1-16 IWAG seeks discovery of the renewable energy certificate (REC) price that the Applicant requires for the project to be financially viable and the price for power to be paid under a power purchase agreement that will be necessary for the Applicant to make the project financially viable. IWAG asserts that this information is discoverable because it relates to the Applicant’s ability to finance the project. The Applicant responds that this information is commercially sensitive and is similar to the prior request of Counsel for the Public to obtain information about the negotiation of “off-take” agreements and a power purchase agreement. See Order on Outstanding Motions p. 3.

IWAG is correct in its broad assertion that the price received for the power generated will determine whether the project will be financially viable. However, such a broad assertion does not establish a basis to compel the Applicant to respond. The very nature of the request belies its commercially sensitive nature. The Applicant will have to engage in negotiations for a power purchase agreement and will likely sell RECs as part of the operation of the facility. To require the Applicant to reveal the price it would take under a power purchase agreement or for RECs

could cause significant harm to its negotiating position and render the Applicant ineffective to command a higher price. Additionally this is not information that has been submitted to the Subcommittee as part of these proceedings. While the Applicant has made it clear that its financial model fails in the absence of a power purchase agreement, no power purchase agreement has been obtained or submitted to the Committee. Thus the request is indeed similar to the prior data request made by Counsel for the Public and any answer must be based on speculation about a number of different factors which have not yet come to fruition. Therefore the request to compel answers to TS 1-15 and 1-16 is denied.

### **C. TS 1-18 (P-90 Capacity Factor)**

IWAG seeks to compel the disclosure of the P-90 capacity factor as calculated by the Applicant. See, TS 1-18. The P-90 capacity factor is a calculation of the output of electricity from the facility that should be exceeded over a period of time with a 90% probability.

IWAG argues that disclosure of the P-90 capacity factor will reveal the confidence that the Applicant has in the project's anticipated performance. (Interestingly IWAG does not designate a time frame for the P-90 calculation that it seeks. The P-90 factor can be calculated on an annual basis or over longer periods of time.) The Applicant responds that the P-90 capacity factor is irrelevant to the Applicant's ability to finance the project and thus not relevant to its financial capability to assure construction and operation of the facility in accordance with the conditions of a certificate. The Applicant asserts that regardless of the P-90 calculation the pivotal criterion as to whether this project will be financed is whether the Applicant can obtain a purchaser for the output of the facility pursuant to the terms of a power purchase agreement. In the absence of a power purchase agreement the Applicant admits that financing for the project is unlikely. The Applicant also asserts that P-90 calculations are highly confidential, sensitive, commercial information that amount to trade secrets. The Applicant argues that it has expended significant resources in developing its calculations and the underlying data. The Applicant argues that the P-90 calculations are proprietary and unique to the Antrim wind project. If revealed the Applicant argues that competitors could make use of the information to the advantage or disadvantage of the applicant and others in the New England electricity markets.

In essence the P-90 capacity factor calculations are predictions based upon data that was accumulated at great expense by the Applicant. Although P-90 factors may be relied on by parties who might finance the project and by potential power purchasers it is not a prediction that is helpful to the Subcommittee in undertaking its evaluation of this Application. The Applicant seeks a Certificate of Site and Facility despite the fact that it admittedly does not have a necessary financial element, a power purchase agreement. We agree that a signed power purchase agreement along with a financing commitment from a qualified lender is the best indicator of financial capacity. Additionally we agree that the P-90 factor is generally recognized as a trade secret that could put the Applicant at a disadvantage in the market, in the context of negotiating agreements and with respect to competitive generators. Therefore the request to compel disclosure of the P-90 capacity factor is denied.

#### **D. TS 1-25 (Net Capacity Factor Under Curtailment Mitigation)**

TS 1-25 requests the net capacity factor of the facility running at higher cut in speeds over the long term. IWAG asserts that this information is relevant to a determination of the effects of environmental and wildlife mitigation on the overall productivity of the facility. IWAG asserts that the net capacity factor will have a bearing on the financial capability of the Applicant because the effects of such mitigation will decrease the overall productivity of the facility. The Applicant, in response, argues that the net capacity factor is not relevant to the Applicant's prospects for appropriately financing the project. In addition the Applicant notes that it has offered a net capacity factor for the project of 37.5% - 40.5% annually. The Applicant claims that this net capacity factor includes any losses in productivity attributable to mitigation measures.

Section F (3) (d) of the Application sets forth a net capacity factor for the project as follows:

No energy plant has a 100% gross capacity factor. Items affecting gross capacity factor include, the availability of the wind resource, planned and unplanned maintenance and the potential for operational curtailment for any reason. Factors affecting net capacity factor include blade soiling, icing, electrical losses in transformation, collection and transmission, and consumption of power for onsite operations. Accounting for all losses, Antrim Wind estimates that the Project will have an average annual net capacity factor of 37.5 – 40.5%.

The Application does not break out or delineate the reduction in capacity factor attributed to mitigation.

The Applicant's Avian and Bat Protection Plan, Application, Appendix 12-F, recognizes that potential bat mortality from the project is of significant concern to the New Hampshire Fish and Game Department and United States Fish and Wildlife Service. Application, Appendix 12-F, p. 49. In fact, the Applicant proposes to conduct a post-construction curtailment evaluation study as a part of its protection plan. The proposed study, according to the Applicant, will allow the Project to:

- assess the potential biological benefits, in terms of expected reduction in mortality;
- estimate the long term cost and financial viability of implementing curtailment as a long term mitigation strategy; and
- recommend an operational control program, if warranted, which balances the Project's financial viability with positive outcomes in avoiding and reducing bat fatality at the Project.

See, Application, Appendix 12-F, p. 51. The Application, through the Avian and Bat Protection Plan, demonstrates that the Applicant is also properly concerned with mitigation of bat mortality and recognizes that curtailment may or may not be a financially viable method of mitigation.

While this issue does not bear directly on the financial capacity of the Applicant, it does raise questions regarding the availability of curtailment as a mitigation measure and is relevant to whether the proposed facility would have an unreasonable adverse effect on the natural environment if it were to attain an annual net capacity factor of 37.5% – 40%. Therefore the request of IWAG for the net capacity factor calculated at higher cut-in speeds is relevant to issues that are before the Committee.

The Applicant has already published its expected annual net capacity factor and stated that the calculation leading to that factor includes “operational curtailment for any reason.” The Applicant is therefore reasonably in a position where it can explain the effect of increasing cut-in speeds on the net capacity factor. In response to the request the Applicant shall provide the measure of curtailment mitigation that contributed to the overall annual net capacity factor set out in the Application. The Applicant shall also provide the parties with the net capacity factor that is expected while conducting the curtailment evaluation study described on page 49 of the Appendix 12-F. The Applicant shall also provide the net capacity factor if the project were to be required to increase cut-in speeds for all turbines during the migratory bat season from mid-August until September 30 (thirty minutes before sundown through thirty minutes after sunrise). The Applicant shall provide this information at the following cut in speeds: 3.5 m/s, 5 m/s and 6 m/s. Because the information sought will merely demonstrate the potential effects of curtailment mitigation on the overall net capacity factor there is no reason for the Subcommittee to issue a protective order for this information. It shall be made available to all parties.

#### **E. TS 1-48 (Draft Feasibility Study)**

In technical session request 1-48 IWAG seeks a copy of the draft feasibility study prepared by ISO-New England (ISO-NE). IWAG asserts that a final feasibility study is unlikely to be available prior to the adjudicative proceedings in this matter and that the draft study is the only information that will indicate how the project will interact with other generators on the electric grid. IWAG asserts that ISO-NE’s security provisions do not prohibit the disclosure of the draft report. The Applicant objects to the request asserting that the draft feasibility report is considered to be Critical Energy Infrastructure Information and may not be disclosed.

To date, the Applicant has not filed the ISO-NE feasibility study or any other system impact study with the Subcommittee. See, Application, Section F(3)(e), p. 25 – 26 (“A copy of the Feasibility Study will be forwarded to Site Evaluation Committee upon completion. Appendix 6 has been reserved for this purpose.”) The system impact studies performed by ISO-NE are undoubtedly critical energy infrastructure information that should not be publicly available. However, at this point in time a final feasibility study has not been completed and the disclosure of a draft report has little relevance and is unhelpful to the Subcommittee. Therefore, this request is denied without prejudice to the parties to seek disclosure of the final report, when complete.

### **III. IWAG Motion for Reconsideration**

IWAG has also filed a motion requesting reconsideration of the Order on Outstanding Motions dated August 22, 2012. Specifically IWAG renews its request for "all spreadsheets and quotes containing expected capital expenditures and labor estimates for the project as referenced in Footnote 1, Appendix 14-B," Data Request 1-13, and for information pertaining to the solicitation and negotiations for a power purchase agreement, Data Request 1-14. IWAG's motion for reconsideration does not present the Subcommittee with any new argument or reason why answers to the disputed data requests should be compelled. The motion does not make any persuasive argument that the previous order is unlawful, unjust, unreasonable, illegal, arbitrary or capricious. Therefore the motion for reconsideration is denied.

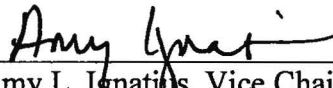
### **IV. Order**

Based upon the foregoing it is hereby:

**Ordered** that Industrial Wind Action Group's Motion to Compel Antrim Wind to Respond to Technical Session Data Requests is granted in part and denied in part as set forth above; and

**Further Ordered** that Industrial Wind Action Group's Motion for Reconsideration Pertaining to Motion to Compel is hereby denied.

**SO ORDERED** this second day of October 2012.

  
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Amy L. Ignatius, Vice Chair  
Presiding Officer  
NH Site Evaluation Committee