

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

\_\_\_\_\_)  
**In the matter of the** )  
**Application for Certification** )

**Pursuant to RSA 162-H of** )  
**ANTRIM WIND ENERGY, LLC** )  
\_\_\_\_\_)

**Docket No. 2012-01**

**OBJECTION OF COUNSEL FOR THE PUBLIC  
TO APPLICANT’S MOTION TO STRIKE**

Counsel for the Public, Peter C.L. Roth, by his attorneys, the Office of the Attorney General, hereby objects to the Applicant’s Motions To Strike Intervenor Sullivan’s Late Filed Objection and the Gregg Lake Association’s letter of June 28.

Both of the Applicant’s Motions to Strike should be denied because the Applicant, after having apparently orchestrated a campaign for the filing of some 43 post-decision “late filed” submittals from a variety of parties, including the Applicant itself, one of its witnesses, parties who have a stake in the outcome but chose not to intervene or participate, and the vast majority complete strangers to the process or the community, should not equitably be permitted to stifle pro se community resident intervenors. *See Royal Bahamian Assoc. v. QBE Ins. Corp.*, 744 F. Supp. 2d 1297, 1302 (M.D. Fla. 2010) (quoting G. Chaucer ‘Whose house is full of glass, must not throw stones at another.’); *accord* <http://www.eolian-energy.com/our-approach/> (“We are committed to engaging and listening to stakeholders ....”). Given the Applicant’s attempt to buy peace on Gregg Lake with its offer to the Town, it is especially inequitable for the Applicant to ask the Sub-Committee to disregard the views of the Gregg Lake Association, whose members appear to have responded with an overwhelmingly disapproving vote.

Significantly, the Sub-Committee can and should waive the response deadline in the rules for Ms. Sullivan and the Gregg Lake Association. N.H. Admin. R., Site 202.15 provides,

- (a) The committee shall waive the provisions this chapter, except where precluded by statute, upon request by an interested party if the committee finds that:
  - (1) The waiver serves the public interest; and
  - (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee.
- (b) In determining the public interest, the committee shall waive a rule if:
  - (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or
  - (2) The purpose of the rule would be satisfied by an alternative method proposed.
- (c) Any interested party seeking a waiver shall make a request in writing, except as provided in (d) below.
- (d) The committee shall accept for consideration any waiver request made orally during a hearing or prehearing conference.
- (e) A request for a waiver shall specify the basis for the waiver and the proposed alternative, if any.

As a party in interest, Counsel for the Public specifically hereby requests such a waiver pursuant to Site 202.15 (c) and to allow the late filings by Ms. Sullivan and the Gregg Lake Association.

In so doing Counsel for the Public points out that the Applicant has alleged no prejudice to it arising from the late filings. Further, at the time of the first motion to strike, the hearing on the Applicant's Motion for Rehearing was still 15 days away; Ms. Sullivan's

letter was filed June 19, giving the Applicant 21 days in which to prepare its arguments against her expressions of sentiment, if it genuinely believes that is really necessary. From the time of the Gregg Lake Association letter, there were 12 days to the hearing. It is plain that Ms. Sullivan and the Gregg Lake Association are both unrepresented by counsel and did not actively participate in the case so they could be forgiven for their unfamiliarity with the Rules. Ms. Sullivan represents that she has medical issues. Both have a unique perspective to the case and it would be in the public interest for the Subcommittee to take that into account. Finally, but for the Presiding Officer's Order of Suspension Pursuant to RSA 541:5, dated May 28, 2013, the decision on the Applicant's Motion for Rehearing would have been made June 13, 2013. Thus, as a result of this suspension, the Applicant has been afforded nearly an additional month to prepare for the upcoming hearing. It appears that the Applicant has also used that opportunity to lard the docket with letters of support from its "partners." It should come as no surprise to the Applicant that other interested parties will weigh in as well. Given the amount of time before the hearing and the nature of the two submittals, there is no reason to believe that waiving the deadline for these two parties will disrupt the orderly and efficient resolution of the Applicant's motion for rehearing. Therefore a waiver of the 10 day objection deadline rule should be granted for Ms. Sullivan and the Gregg Lake Association and the Applicant's motions to strike should be denied.

WHEREFORE, Counsel for the Public respectfully requests that the Committee deny the Applicant's Motions to Strike, and grant Counsel for the Public's waiver requests, and grant him such other and further relief as may be just.

Respectfully submitted,

COUNSEL FOR THE PUBLIC

By his attorneys

JOSEPH A. FOSTER  
ATTORNEY GENERAL



Dated: July 5, 2013

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**CERTIFICATE OF SERVICE**

I, Peter C.L. Roth, do hereby certify that on this day, I caused a true copy of the foregoing to be served upon the Parties on the official service list, by electronic mail.

Dated: July 5, 2013

/s/ Peter C.L. Roth