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

ORDER ON PENDING MOTIONS

Issued September 10, 2013

I. PROCEDURAL HISTORY

On May 2, 2013, a duly appointed Subcommittee of the Site Evaluation Committee ("Subcommittee") issued its Decision denying a Certificate of Site and Facility ("Certificate") to Antrim Wind Energy, LLC ("Applicant"), for the construction and operation of a renewable energy facility ("Facility" or "Project") consisting of not more than 10 wind turbines each having a nameplate capacity of not more than 3 megawatts ("MW") for a total nameplate capacity of 30 MW to be located in the Town of Antrim, Hillsborough County, New Hampshire ("Site"). The Decision was issued after the Subcommittee held eleven days of evidentiary hearings and three days of public deliberation. The Subcommittee heard from 39 witnesses, and considered more than 260 exhibits, along with oral and written statements from interested members of the public. In addition, the Subcommittee held a public hearing in Antrim, Hillsborough County, conducted several technical sessions, and visited the proposed Site. The Subcommittee's final Decision was the result of a rigorous review of the Application, the testimony, the exhibits, public comments and various pleadings filed by the parties.

The Subcommittee received the following Motions for Reconsideration and/or Rehearing and the following Objections:

- On May 15, 2013, the Town of Antrim filed a Motion for Rehearing and/or Reconsideration. On May 23, 2013, Counsel for the Public filed an Objection to the Town of Antrim's Motion for Rehearing. On May 28, 2013, Robert. L. Edwards and Mary E. Allen ("Edwards/Allen"), Richard Carey Block, Loranne Carey Block, Annie Law, Robert A. Cleland, Elsa Voelcker, James Hankard, Samuel E. Apkarian, and Michele D. Apkarian ("North Branch Residents"), and Janice Longgood, Mark J. Schaefer, Brenda Schaefer, Nathan Schaefer, and Clark Craig Jr. ("Abutters") filed a joint objection to the Town of Antrim's Motion for Rehearing and/or Reconsideration.

- On May 24, 2013, Michael J.H. Ott, Antrim Limited Partnership, Paul J. Whittemore and Whittemore Trust ("Antrim Landowners") filed a Motion for Rehearing. On June 3, 2013, Edwards/Allen, the North Branch Residents, and the Abutters filed an objection to the Antrim Landowners' Motion for Rehearing. On June 3, 2013, Counsel for the Public also filed an objection to the Antrim Landowners' Motion for Rehearing.

- On June 3, 2013, Counsel for the Public filed a Motion for Rehearing.[1] On June 7, 2013, the Applicant filed an objection to Counsel for the Public's Motion for Rehearing.

- On June 3, 2013, the Applicant filed a Motion for Rehearing and Motion to Reopen the Record.[2] On June 13, 2013, Industrial Wind Action Group ("IWA") filed an objection to the Applicant's Motion for Rehearing and Motion to Reopen the Record. On June 13, 2013, the Audubon Society of New Hampshire ("Audubon") filed an objection to the Applicant's Motion for Rehearing and to Reopen. On June 13, 2013, Counsel for the Public filed an objection to the Applicant's Motion for Rehearing and Motion to Reopen the Record. On June 13, 2013, Edwards/Allen, the North Branch Residents, and the Abutters also filed a joint objection to the Applicant's Motion for Rehearing and Motion to Reopen the Record.

The Committee also received additional public comments about the Application and the Decision to deny the Application.

II. MOTIONS FOR REHEARING AND/OR RECONSIDERATION

A. STANDARD OF REVIEW

Under RSA 541:2, any order or decision of the Committee or a Subcommittee may be the subject of a motion for rehearing or of an appeal in the manner prescribed by the statute. See RSA 541:2. A request for rehearing may be made by "any party to the action or proceeding before the commission, or any person directly affected thereby." RSA 541:3. The motion for rehearing must specify "all grounds for rehearing," and the Committee or Subcommittee may grant such rehearing if in its opinion "good reason for the rehearing is stated in the motion." Id. Any such motion for rehearing "shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." RSA 541:4; see also RSA 541:13. The purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision and to invite reconsideration upon the record to which that decision rested. Dumais v. State of New Hampshire Pers. Comm., 118 N.H. 309, 311 (1978). A rehearing may be granted when the Committee or Subcommittee finds "good reason." See RSA 541:3. A motion for rehearing must be denied where no "good reason" or "good cause" has been demonstrated. O'Loughlin v. NH Pers. Comm., 117 N.H. 999, 1004 (1977); see In re Gas Service, Inc., 121 N.H. 797, 801 (1981); see also Order on Motions for Clarification, Rehearing and Reconsideration, Application of Groton Wind, LLC, Docket No. 2010-01 (Aug. 8, 2011).

[1] It is noted that Counsel for the Public filed two Motions for Rehearing dated May 28, 2013, and June 3, 2013. At oral argument, Counsel for the Public explained that he intended only the Motion for Rehearing dated June 3, 2013 to be filed and operative. Transcript, July 10, 2013, p. 77.

[2] Attachment F submitted together with the Motion was amended by the Applicant on July 9, 2013.

B. DISCUSSION

1. Applicant's Motion for Rehearing.

a. Position of the Parties

On June 3, 2013, the Applicant filed a Motion for Rehearing and Motion to Reopen the Record. The Applicant asserts that the Subcommittee erred in the manner in which it considered the impact of the Project on the aesthetics of the region. See Applicant's Motion for Rehearing at 6-33. The Applicant claims that the Subcommittee's Decision is unlawful, unjust, unreasonable, and an abuse of discretion because the Subcommittee allegedly failed to follow its own precedent concerning the impact of wind projects on the aesthetics of the region. Id. at 7-19, 20-21. The essence of this argument is the claim that the Committee, in prior dockets, considered aesthetic concerns that were "virtually indistinguishable from those in this case." Id. at 3. In its Motion, the Applicant argues that the Subcommittee introduced a "new standard" by considering viewsheds of significant value rather than a "regional impact analysis." Id. at 15-21. The Applicant further asserts that the Subcommittee acted unlawfully, unreasonably, and arbitrarily in failing to issue a ruling on the Applicant's financial capacity in accordance with RSA 162-H:16, IV(a). Id. at 33-41. The crux of the argument here is that the Subcommittee allegedly had sufficient information upon which to make a positive finding of financial capability, but failed to do so. Id. at 34-37. Finally, the Applicant requests that the Subcommittee reconsider its determination of sound restriction conditions. The Applicant also argues that the sound restrictions adopted by the Subcommittee are not based on the record evidence and are unlawful, unreasonable, and arbitrary. Id. at 41-44. Specifically, the Applicant alleges that while the Subcommittee indicated that it was applying the 2009 World Health Organization's Guidelines for night sound levels, it failed to follow those Guidelines and applied an absolute standard instead of a yearly average. Id. at 41-44. The Applicant further alleges that the conditions are unreasonable because the Subcommittee allegedly failed to follow its own precedent and consider the Applicant's agreement with the Town of Antrim. Id. at 44-47.

On June 13, 2013, IWA filed an objection to the Applicant's Motion for Rehearing and Motion to Reopen the Record. IWA asserts that the Subcommittee's noise restrictions were not unreasonable, because the Subcommittee recognized that the $L_{night, outside}$ indicator is not practical for enforcement purposes, and that a 40 dBA absolute threshold is a good surrogate for the $L_{night, outside}$ indicator for the purposes of enforcement and ensuring public health. See IWA's Objection to Applicant's Motion for Rehearing at 1-3. IWA further asserts that the Subcommittee's noise restrictions in prior decisions were designed to address specific projects and cannot be used for the purpose of establishing noise restrictions for projects with different specifications. Id. at 3-5.

On June 13, 2013, Audubon filed an objection to the Applicant's Motion for Rehearing and to Reopen. While urging the Subcommittee to deny the Applicant's request for rehearing, Audubon argues that the Applicant misinterprets the weight the Subcommittee should give to its prior decisions. See Audubon Objection at 3-5. Audubon states that the Subcommittee's prior decisions are not totally irrelevant or absolutely binding on the Subcommittee. Id. Audubon asserts that the Subcommittee is not required to apply the same conditions to the Project as it applied to other wind energy facilities but, rather, is required to review the specifications of this

particular Project while giving due consideration to its prior decisions. Id. Audubon concludes that the Subcommittee's Decision is just and reasonable because the Subcommittee considered its prior decisions, and evaluated the facts unique to the Project while deciding whether the Project meets the objective standards set forth in RSA 162-H:16. Id.

On June 13, 2013, Counsel for the Public filed an objection to the Applicant's Motion for Rehearing. Counsel for the Public asserts that the Applicant failed to present good cause for rehearing. Specifically, Counsel for the Public argues that the Subcommittee was not required to follow pre-existing standards, but was required to conduct "case-by-case adjudication". See Counsel for the Public's Objection at 6-7. Counsel for the Public asserts that the legislature specifically precluded the Subcommittee from creating "substantive rules binding in future cases involving other projects" and gave the Subcommittee authority only to conduct "case-by-case evolution of the statutory standards." Id. at 8. Counsel for the Public further concludes that the Committee conducted an adequate evaluation of the Project, more than adequately explained the distinctions between this Project and other projects, and issued its Decision based on unique specifications of the Project in this docket. Id. at 9-12.

Counsel for the Public also asserts that the Applicant is judicially estopped from claiming that the Subcommittee erred by failing to consider the methodology used in prior cases to determine visual impacts in this case. Counsel for the Public points out that the Applicant objected when Counsel for the Public's expert was questioned about the visual impact methodologies used in prior cases. The objection was sustained and Counsel for the Public argues that the Applicant is now estopped from arguing that the Subcommittee failed to follow the methodology used in prior cases. Id. at 12-13. Counsel for the Public claims that the Applicant failed to preserve the record and failed to assert any reliance on the Subcommittee's prior decisions with respect to comparable visual impacts analysis during the pendency of this case before the Subcommittee. Id. at 13-14. With regard to the noise restrictions Counsel for the Public asserts that the conditions were fully considered by the Subcommittee and well within the Subcommittee's discretion to make "such reasonable terms and conditions as the committee deems necessary…." Id. at 14. Counsel for the Public further states that the Subcommittee's Decision addressing the Applicant's financial capacity was not unjust. Id. at 15. According to Counsel for the Public, the Applicant simply failed to prove that it has the financial capacity required for the construction and operation of the Project. Id.

On June 13, 2013, Edwards/Allen, the North Branch Residents, and the Abutters also filed a joint Objection to the Applicant's Motion for Rehearing and Motion to Reopen the Record. These intervenors urge the Subcommittee to deny the Applicant's Motion for Rehearing and state that: (i) in general, the Applicant's claim that the Subcommittee should have applied the same standards to the Project as it applied to other wind energy facilities is unfounded because it ignores the fact that the Project is substantially different from other wind energy facilities; (ii) the Applicant over values its purported mitigation measures; and (iii) the Applicant failed to adequately prove that it had adequate financial capacity to construct and operate the proposed facility. See Objection of Three Intervenor Groups at 2-12.

b. Analysis

i. Aesthetics

The Applicant's argument that the Subcommittee "applied a new standard" to its consideration of aesthetics lacks merit. The Subcommittee is statutorily obligated to determine, on case-by-case basis, the impact of each particular project on the affected region. See RSA 162-H. In its prior decisions, the Committee conducted specific analyses of the visual impacts of the projects, taking into consideration each project's topography, size, and specifications. The Subcommittee conducted a similar analysis in this docket. The Subcommittee considered the height of the turbines as proposed by the Applicant together with its surroundings and found that the Project will have an unreasonable adverse effect on the aesthetics of the region. The Subcommittee specifically explained that the Project will have an unreasonable adverse effect on the aesthetics of the overall community, in the area referred to as Willard Pond, and the dePierrefeu Wildlife Sanctuary. The Subcommittee also found that the Application lacked satisfactory mitigation for the aesthetic impacts of the Facility. The Subcommittee further considered the fact that the turbines, as proposed, would be approximately 492 feet tall when measured to the tip of the blade and would make up between approximately 25 and 35 percent of the elevation of the ridgeline where they would be located. The Subcommittee concluded that the size of the proposed turbines would appear out of scale and out of context with local topography. The Subcommittee's review of the effect of the Project on the aesthetics of the region was in line with the reviews of previous wind projects. The Applicant's assertion that the Subcommittee should not have done a case-by-case analysis is contrary to the legislative mandate and, therefore, is unreasonable.

In addition, as in similar cases, the Subcommittee considered the extensive reports and testimony provided by experts in the field of landscape architecture. The Applicant presented the report and testimony of John Guariglia of Saratoga Associates. Counsel for the Public presented the report and testimony of Jean Vissering of Jean Vissering Landscape Architecture. Both experts agreed that the proposed Facility would not be visible within 95% of the surrounding 10 mile radius. However, the experts disagreed about the visual impact of the proposed facility on various locations within the radius. A majority of the Subcommittee found that Ms. Vissering's approach and her conclusions about the visual impacts of turbines on various viewsheds was more persuasive. A majority of the Subcommittee found that Ms. Vissering had a better understanding of the status and values of certain viewsheds within and near the Town of Antrim. The majority also found Mr. Guariglia's definition of statewide significance to be overly restrictive. In sum, the Subcommittee heard testimony from two proffered experts and determined that Ms. Vissering's analysis was the sounder view.

In considering the aesthetic impact of the Project on the area, the Subcommittee concluded that the offered mitigation plan was not of a sufficient nature or quality to adequately offset the unreasonable adverse impacts of the Project on the aesthetics and viewsheds in the region. The Applicant failed to satisfy its burden to prove that the Project, along with the mitigation plan, would not impose an unreasonable adverse impact on aesthetics in the region.

The Applicant's request to rehear and reconsider the Decision as it relates to the determination of the impact of the project on the aesthetics of the region is denied. The Applicant did not present any new or previously unconsidered evidence to demonstrate that the Subcommittee's Decision was unlawful, unreasonable or arbitrary. There is not good reason to grant a rehearing or reconsideration.

ii. Financial Capacity of the Applicant

The Applicant asserts that the Subcommittee should reconsider its Decision as it relates to the determination of the Applicant's financial capacity to construct and operate the Project and should affirmatively find that the Applicant met its burden and demonstrated that it has financial capacity to construct and operate the Project. The Subcommittee acknowledges that RSA 541-A:35 requires the Subcommittee to issue a Decision which "shall include findings of fact and conclusions of law, separately stated." See RSA 541-A:35. RSA 541-A:35, however, does not require the Subcommittee to issue a ruling on findings of fact or conclusions of law pertaining to issues that the Subcommittee did not reach. The Subcommittee reviewed the facts surrounding the Applicant's financial capacity and memorialized its review in the Decision. Under New Hampshire law, the Subcommittee is required to state findings of fact and conclusions of law that lead to its decision either to deny or to grant an Application. The Subcommittee complied with the requirements of the legislature in this docket by finding that the Project would have unreasonable adverse effect on the aesthetics of the region and denying the Application based on this determination. A ruling on the financial capability of the Applicant was not required for the resolution of the Application. The findings of fact and rulings of law leading to the denial of the Application for a Certificate of Site and Facility are clearly stated in the Decision and in the record. The fact that the Subcommittee did not rule on the issue of financial capability is not good cause requiring rehearing or reconsideration.

iii. Noise

The Applicant asserts that, while considering the issue of noise, the Subcommittee failed to fully apply the World Health Organization Guidelines, failed to follow its own precedent and failed to consider the noise restrictions agreed to by the Towns. The Applicant's argument that the Subcommittee misapplied the World Health Organization Guidelines is erroneous. The Subcommittee utilized the 2009 World Health Organization Guidelines as a guide. The Subcommittee reviewed the World Health Organization Guidelines, other guidelines, the reports and testimony of the expert witnesses proffered by the parties and the exhibits. Based on that review, the Subcommittee determined that based on the data for this proposed Facility, a noise level limit of not more than 40 dB would assure that there is no unreasonable adverse public health effect. The Site Evaluation Committee has never designated a sound pressure/noise limit that would apply in all cases. In every case considered by the Committee, noise level limits have rested upon the individual data for the particular facility. The ultimate noise level limit that was applied was the result of individualized consideration of the existing ambient sound levels and the sound levels expected to be generated if the proposed Facility was built. The Decision was supported by the evidence and testimony presented in this particular case. The Applicant's Motion for Rehearing as it relates to noise levels is denied.

b. Town of Antrim's Motion for Rehearing and/or Reconsideration.

On May 15, 2013, the Town of Antrim, through its Board of Selectmen, filed a Motion for Reconsideration and/or Rehearing. The Town of Antrim alleges the following: (i) the Subcommittee overlooked evidence demonstrating that the Project would not be visible from approximately 95% of the locations within a 10-mile radius surrounding each turbine; (ii) the Subcommittee allegedly failed to give due consideration to the Town's position that the Applicant has met its burden and should have been granted the Certificate; (iii) the Subcommittee's Decision is unreasonable because allegedly it does not address the issue of the effect of the Project on aesthetics of the region in the same manner as other decisions of the Subcommittee; (iv) the Decision should be reconsidered in light of a Letter Agreement filed by the Town. See Town of Antrim's Motion for Reconsideration and/or Rehearing.

On May 23, 2013, Counsel for the Public filed an Objection to the Town of Antrim's Motion for Rehearing. Counsel for the Public asserts that the Committee has already addressed and considered Town's position in its Decision. See Counsel for the Public's Objection at 2. As to the Town's argument that the Committee failed to specifically address the Town's views on the impact of the Project on the aesthetics of the region, Counsel for the Public asserts that the Subcommittee could not specifically address the Town's position as to the impact of the Project on the aesthetics because the Town failed to voice its views at the time of the hearing. Id. at 3. As to the Town's position that the Subcommittee's Decision should follow the other decisions of the Subcommittee, Counsel for the Public asserts that the Subcommittee specifically addressed the fact that its Decision in this docket is unlike its prior decisions in other wind project dockets and decided that specifications of the Project warrant the deviation from the Committee's prior decisions. Id. at 4-6. Counsel for the Public further asserts that the Subcommittee should not consider the Letter Agreement submitted by the Town because it was entered into and provided to the Subcommittee *post factum*. Id. at 7-9.

On May 28, 2013, Edwards/Allen, the North Branch Residents, and the Abutters filed a joint objection to the Town of Antrim's Motion for Rehearing and/or Reconsideration. The intervenors assert that the Town of Antrim failed to state any facts which the Subcommittee overlooked or mistakenly conceived and simply restated a position that had already been considered by the Subcommittee. See Objection of Three Intervenor Groups.

The Town of Antrim's assertion that the Subcommittee overlooked evidence demonstrating that the Project would not be visible from approximately 95% of the locations within a 10-mile radius surrounding each turbine is erroneous. The Subcommittee considered and specifically addressed Mr. Guariglia's Report and this argument in its Decision. See Decision at 47. The Subcommittee also considered and addressed the fact that a majority of voters in the Town of Antrim supported the proposed Facility. See Decision at 41. The Town of Antrim's argument that the Subcommittee misapprehended the facts of this case when it allegedly failed to follow its previously established precedent is similar to the Applicant's argument addressed above and does not require separate consideration.

In its motion, the Town also relies on a letter agreement between the Town and the Applicant. The letter agreement, in pertinent part, calls for the Applicant to contribute a one-

time payment of $40,000.00 to the Town of Antrim to mitigate the aesthetic impact of the proposed Facility on the Gregg Lake area of Antrim. The letter agreement itself originated after the issuance of the Subcommittee's Decision. The letter agreement itself is not sufficient cause for rehearing or reconsideration.

The Subcommittee finds that the Town of Antrim failed to establish good cause requiring reconsideration of the Decision and, therefore, denies the Town of Antrim's request for reconsideration and rehearing.

c. Antrim Landowners' Motion for Rehearing.

On May 24, 2013, the Antrim Landowners filed a Motion for Rehearing. The Antrim Landowners assert that the Subcommittee's decision "deprives the Antrim Landowners of the freedom to use [their] property as [they] wish, as well as the ability to receive the benefits of the leases that [they] have negotiated with the [Applicant]." See Antrim Landowners' Motion for Rehearing at 1. The Antrim Landowners further allege that the Subcommittee failed to consider the long-term positive impact of the Project on the aesthetics of the region; *i.e.*, the fact that the Tuttle Hill ridgeline will be protected by conservation easements and remain in a largely undeveloped condition after the decommissioning of the Project. Id. at 2.

On June 3, 2013, Edwards/Allen, the North Branch Residents, and the Abutters filed an objection to the Antrim Landowners' Motion for Rehearing. The intervenors assert that the Subcommittee should deny the Landowners' Motion for Reconsideration because: (i) the Landowners' Motion does not present new facts or arguments; (ii) the Landowners failed to raise their argument during the hearing and, therefore, waived their right to request the Subcommittee to reconsider its Decision; (iii) the Landowners inaccurately describe their property rights because their contracts with the Applicant were conditioned upon the Applicant's ability to receive the Certificate; (iv) the Landowners overestimate the value of proposed conservation easements; and (v) the Landowners misinterpret the Subcommittee's Decision by stating that the Subcommittee's decision was heavily influenced by only one landowner. See Objection of Three Intervenor Groups.

In his Objection to the Antrim Landowners' Motion for Rehearing dated June 3, 2013, Counsel for the Public also asserts that the Landowners' request should be denied. Counsel for the Public asserts that the Landowners lack standing due to the fact that they failed actively to participate in this docket and have not included in their Motion any evidence indicating that any of their rights were directly affected by the Subcommittee's Decision. See Counsel for the Public's Objection.

As a preliminary matter, the Subcommittee finds that the Antrim Landowners have standing to file a Motion for Rehearing. See RSA 541:3 ("Any party to the action or proceeding before the Commission, or any person directly affected thereby, may apply for a rehearing"). The Subcommittee's Decision denying the Certificate affected the Antrim Landowners' agreements with the Applicant. As affected parties, the Landowners have standing to request the reconsideration of the Decision. See RSA 541:3. The Subcommittee finds, however, that the Antrim Landowners failed to show good cause warranting reconsideration of the

Subcommittee's Decision. The Decision does not preclude the Antrim Landowners from leasing their land to some other enterprise. Denial or approval of the Application does not and cannot guarantee a receipt of revenue by the owners. The Antrim Landowners' Motion for Reconsideration is denied.

d. Counsel for the Public's Motion for Rehearing.

In his Motion for Rehearing dated June 3, 2013, Counsel for the Public asks the Subcommittee to rehear its Decision with respect to technical and managerial capability of the Applicant. See Counsel for the Public's Motion for Rehearing at 1. Counsel for the Public asserts that the finding that the Applicant possessed sufficient technical and managerial capability was not supported by the evidence in this docket. Id. at 2. Counsel for the Public also argues that the Subcommittee should not have found that the Applicant has the technical and managerial capability to construct and operate the Project, but rather, should have found that this issue was moot in light of the decision to deny the Application based on the impact of the Project on the aesthetics of the region. Id.

The Applicant objected to Counsel for Public's Motion for Rehearing on June 7, 2013. The Applicant points out that the Subcommittee is required to consider the Applicant's technical and managerial capability under RSA 162-H:16, IV (a). See Applicant's Objection at 2-3. The Applicant also asserts that Counsel for the Public failed to state facts showing that the Subcommittee's finding of technical and managerial capability of the Applicant was unlawful, unjust, unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary, or unreasonable or capricious as required for sustaining request for rehearing under N.H. ADMIN. R. Site 201.29(d). Id. at 3-5.

The Subcommittee finds that Counsel for the Public failed to show good cause requiring reconsideration of the decision pertaining to technical and managerial capabilities. The finding was supported by the record in this docket. Counsel for the Public did not demonstrate that the Subcommittee overlooked or mistakenly conceived facts in its original decision. Therefore, Counsel for the Public's Motion for Rehearing is denied. Additionally, the Subcommittee has and will remain a neutral decision maker. The Subcommittee cannot render a decision on Counsel for the Public's motion out of concern for a party's position or convenience in an appeal of this matter.

III. MOTION TO REOPEN THE RECORD

A. STANDARD OF REVIEW

"A party may request that the record be re-opened to receive relevant, material and non-duplicative evidence or argument by written motion." NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, Site 202.27 (a). The record shall be reopened to accept additional evidence or argument "[i]f the presiding officer determines that additional testimony, evidence or arguments are necessary for a full consideration of the issues presented at the hearing." NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, Site 202.27 (b). The presiding officer shall specify a date no later than 30 days from the date of receiving the additional testimony, evidence

or argument by which other parties shall respond to or rebut the newly received materials. NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, Site 202.27 (c).

B. DISCUSSION

The Applicant filed a Motion to Reopen the Record on June 3, 2013. The Applicant requested the Subcommittee to reopen the record so that the Subcommittee would consider new documents and evidence provided by the Applicant. See Applicant's Motion for Rehearing and Motion to Reopen the Record. Specifically, the Applicant asserts that, in response to the Subcommittee's comments during deliberation, the Applicant revised its plans and decided to remove turbine #10 in order to decrease the Project's impact on the aesthetics of the region; reached an Agreement with the Town of Antrim on a one-time payment for enhancement to the Gregg Lake Beach area; and offered a one-time payment to the NH Audubon. Id. at 48-52. The Applicant also states that it received two letters of interest in the Project from two financial institutions and introduction of the letters warrants the reopening of the record. Id. at 52-53.

In response, Counsel for the Public asserts that the Applicant failed to demonstrate that the reopening of the record is required. See Objection to Counsel for the Public at 15-16. Counsel for the Public asserts that the Applicant is simply attempting to relitigate issues by requesting the reopening of the record instead of filing a new Application. Id. at 17-18. Counsel for the Public further asserts that there is no evidence showing that the new evidence and documentation that the Applicant seeks to introduce would sufficiently mitigate the effect of the Project on the aesthetics of the region. Id. at 17. As to the letters of interest, Counsel for the Public asserts that they are "too little and too late." Id. Finally, Counsel for the Public asserts that the Subcommittee does not have jurisdiction to entertain the Applicant's request to reopen the record because the Applicant failed to file a complete Application by January 1, 2012, as ordered by the Subcommittee in its August, 2011, Jurisdictional Order. Id. at 19-20.

In its Objection to the Motion to Reopen, Audubon urges the Subcommittee to deny the Applicant's request to reopen the record and states that "[n]one of the Applicant's new evidence is relevant and material and non-duplicative and needed for full consideration of the issues presented at the hearing." See Audubon's Objection at 6.

Edwards/Allen, the North Branch Residents, and the Abutters also urge the Subcommittee to deny the Applicant's request to reopen the record and state that new mitigation information submitted by the Applicant is not significant and the financial letters "have no value and do not add any substantial evidence to the record." See Objection of Three Intervenor Groups at 12.

As a preliminary matter, the presiding officer acknowledges that she has exclusive authority to issue a decision on the request to reopen the record. See NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, Site 202.27 (b). In light of the importance of the request made by the Applicant, the Presiding Officer delegated her authority to determine the issue to the Subcommittee. The Subcommittee finds that the review of the new evidence submitted by the Applicant would require the re-review of the entire Application in light of the requirements set forth by RSA 162-H. A distinction must be made between a request which would require the

Subcommittee to review new evidence and a request which would materially change the original Application and would require the Subcommittee to conduct an extensive re-review of the entire Application. Although reopening of the record is permissible under the first set of circumstances, it is unacceptable under the second. Here, the Applicant seeks to introduce evidence which would materially change the original Application and would require extensive *de novo* review as opposed to "a full consideration of the issues *presented at the hearing*." NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, Site 202.27 (b) (emphasis added). The Applicant's Motion to Reopen the record is denied.

Similarly, the request to reopen the record to review the Agreement entered into by the Applicant and the Town of Antrim would require re-evaluation of the entire Application. Therefore, the Motion to Reopen is denied.

IV. CONCLUSION

Based upon the foregoing, it is hereby ordered that the Applicant's Motion for Rehearing is **DENIED**; and it is,

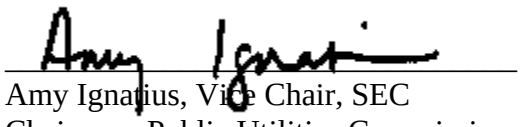
Further Ordered that the Town of Antrim's Motion for Rehearing and/or Reconsideration is **DENIED**; and it is,

Further Ordered that the Antrim Landowners' Motion for Rehearing is **DENIED**; and it is,

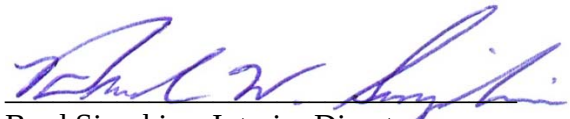
Further Ordered that Counsel for the Public's Motion for Rehearing is **DENIED**; and it is,

Further Ordered that the Applicant's Motion to Reopen the Record is **DENIED**.

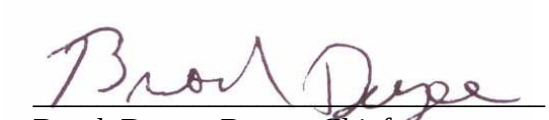
By Order of the Site Evaluation Committee this 10th day of September, 2013.



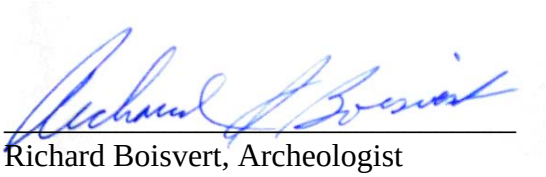
Amy Ignatius, Vice Chair, SEC
Chairman, Public Utilities Commission



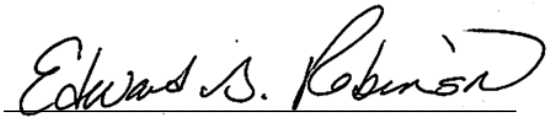
Brad Simpkins, Interim Director
Division of Forests & Lands
Dept. of Resources & Economic Dev.



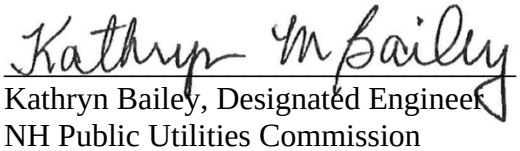
Brook Dupee, Bureau Chief
Dept. of Health & Human Services
Division of Public Health Services



Richard Boisvert, Archeologist
NH Div. of Historical Resources



Edward Robinson, Biologist
NH Fish & Game Dept.



Kathryn Bailey, Designated Engineer
NH Public Utilities Commission