

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2012-03

**Motion for Declaratory Ruling by Atlantic Design Engineers, Inc. on behalf of
Jericho Power, LLC**

**FINAL ORDER GRANTING MOTION FILED BY ATLANTIC ENGINEERS, INC.
ON BEHALF OF JERICHO POWER, LLC**

MARCH 18, 2013

Background

On October 3, 2012, Atlantic Design Engineers, Inc. on behalf of Jericho Power, LLC (Applicant) filed a "Request for Motion for Declaratory Ruling" (Motion) pursuant to N.H. CODE OF ADMINISTRATIVE RULES, SITE 203.1 with the New Hampshire Site Evaluation Committee (Committee). The Applicant seeks to construct a wind energy facility (Facility) consisting of up to three (3) turbines on the western slope of Jericho Mountain in Berlin, Coos County, New Hampshire. The Applicant anticipates that the Project will have a rated capacity between 4.95 and 8.55 megawatts. The Applicant requests the Committee to issue an Order declining to exercise its discretionary jurisdiction. See, RSA 162-H:2, XII.

Background of the Site

The proposed site for the Project is the western slope of Jericho Mountain. The site sits wholly within the City of Berlin. Transcript, p. 25. The site has hosted wind turbines in the past. In 2006, Loranger Power installed three wind turbines on the site. Those turbines were decommissioned in 2008. Transcript, pp. 14-15. The prior turbines were "lattice style" structures. Transcript, p. 20. The prior operator of the site had difficulty in interconnecting the turbines with the existing electric grid. Transcript, pp. 19-20.

On June 2, 2009, the Berlin Planning Board originally approved a site plan for the Project. See, Notice of Berlin Planning Board Decision. The approval was amended after a public hearing of the Planning Board on January 8, 2013. The Planning Board approval permits the construction of three turbines not to exceed 500 feet in height. Id., Transcript, p. 33. The January 8, 2013, hearing of the Planning Board was noticed to all surrounding towns and the North Country Council. Transcript, p. 61. The Project has also been approved for special exception by the Berlin Zoning Board of Adjustment. Transcript, pp. 36-37.

Procedural History

The Motion was filed on October 3, 2012. On December 10, 2012, the Chairman issued an Order and Notice of Public Hearing and Meeting. The Order and Notice described the proposed Project and the nature of the Motion and scheduled a public meeting and hearing before the Committee for January 10, 2013. The Notice indicated that the Committee may consider and deliberate on the relief requested in the Motion at the hearing. The Order and Notice also set a deadline for the filing of Motions to Intervene, and notified the public that written comment would be accepted during the pendency of the proceeding. The Order and Notice was published on the Committee's website. It was also published in the Union Leader on December 14, 2012 and in the Berlin Daily Sun on December 13, 2012. A display advertisement noticing this hearing was also published in the Berlin Daily Sun on December 13, 2012. No parties sought intervention. No public comment was received. A hearing was held at the public meeting of the Committee on January 10, 2013. The Committee heard testimony from Lindsay Deane and Gordon Deane from Jericho Power, LLC. The Committee also took testimony from Pamela Laflamme, Berlin City Planner. After hearing the testimony and arguments, a majority of the Committee voted to grant the Motion. Therefore, the Applicant is not required to obtain a Certificate of Site and Facility prior to the siting, construction and operation of the Facility. This Order memorializes the reasons for the grant of the Motion.

Legal Analysis

A. Jurisdiction

In accordance with RSA 162-H:2, XII, the Committee has jurisdiction over renewable energy facilities "of 30 megawatts or less nameplate capacity but at least 5 megawatts which the Committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1, either on its own motion or by petition of the applicant, or 2 or more petitioners as defined in RSA 162-H:2, XI." RSA 162-H:2, XII.

In the instant matter, the Facility is a renewable energy facility of less than 30 megawatts, but potentially greater than 5 megawatts. The Motion satisfies the requirements of RSA 162-H:2, XI. The question for the Committee is whether a certificate should be required, consistent with the findings and purposes set forth in RSA 162-H: 1.

B. Legal Standard for Requiring a Certificate

In order to assert jurisdiction on its own motion, the Committee must find that the requirement of a certificate for this Facility is consistent with the findings and purposes set forth in RSA 162-H:1. The purpose of RSA 162-H: 1 is to "assure that the state has an adequate and reliable supply of energy in conformance with sound environmental

principles.” Specifically, the Committee must determine whether a Certificate is necessary in order to:

- (1) Maintain a balance between the environment and the need for new energy facilities in New Hampshire;
- (2) Avoid undue delay in the construction of needed facilities and provide full and timely consideration of environmental consequences;
- (3) Ensure that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and,
- (4) Ensure that the construction and operation of energy facilities are treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.

See RSA 162-H: 1. In considering whether to assert discretionary jurisdiction over the Facility, the Committee must consider the foregoing purposes of RSA 162-H. If the Committee finds that review is not necessary to achieve the goals of the statute, then the Committee should grant the Motion. However, if the Committee decides that the goals of the statute are best met by requiring review, then the Motion should be denied. In this case, the Committee finds that the review is not necessary and the Motion will be granted.

Discussion

A. Balancing Concerns for the Environment and the Need for Renewable Energy.

The State has set forth goals that describe the need for additional sources of renewable energy. These goals are set forth in the State’s renewable energy portfolio statute, RSA 362-F, and in the Governor’s “25x25” plan to obtain at least 25% of the State’s total energy needs from renewable sources by the year 2025. See Executive Order No. 2007-003. The Committee recognizes that the State of New Hampshire has a need for clean and renewable energy sources. It is against this need that the Committee will balance the effect of the proposed Project on the environment.

The Applicant submits that construction of the proposed Facility will not disturb wetlands. In addition the construction of the Facility will be subject to an Alteration of Terrain Permit from the Department of Environmental Services. Transcript, p. 16. Likewise the design, construction and operation of the proposed facility is subject to and has been approved by the Berlin Planning Board. The local planning board and

zoning board of adjustment have approved the construction and operation of not more than three turbines at heights of not more than 500 feet. Transcript, pp. 36-37. Final design and construction will be subject to further review by local authorities (including the city building inspector and fire department), Transcript p. 22, as the design for the Project changes after the completion of an electrical interconnection study.

In addition, the Project will be located more than one mile away from the closest residence. Transcript, p. 15. The Applicant also advises the Committee that the Facility is consistent with and will meet the intent of the Proposed Wind Power Siting Guidelines that were forwarded to the New Hampshire Energy Policy Committee on May 29, 2007.¹

The proposed Facility is small relative to other wind energy facilities. The Committee's mandatory jurisdictional threshold begins at 30 MW. The proposed Facility will have nameplate capacity between 5 and 9MW. Likewise the proposed facility will have a smaller footprint and fewer environmental impacts than the types of wind facilities that are normally considered by the Committee. Moreover, this Facility is located on a site that has already been dedicated to wind energy production. Transcript, pp. 14-15.

Because the Facility is relatively small, a significant distance from the nearest residence and subject to environmental regulation by both DES and local planning agencies the exercise of discretionary jurisdiction by the Committee is not necessary. Concerns reflecting the environmental impact of the Facility can be adequately addressed through the permitting process required at DES and through the City's planning process. Given the relatively small size of the project there is nothing that requires Committee process in order to assure that environmental impacts are balanced against the need for renewable energy.

B. Undue Delay

Based upon the record of these proceedings, it appears that further review by the Committee would be unnecessarily duplicative of the determinations that would normally be made by various state agencies and the City of Berlin. In fact, review by the Committee would likely require the Applicant to prepare and file a substantial Application for a Certificate of Site and Facility and to participate in both public informational hearings and adjudicatory proceedings which last approximately eight months. The Applicant is already engaged in the environmental review and City planning processes that is required for construction of the Project. Additionally, the Project has undergone considerable local review that was open to public participation. The Committee finds that the delay which may be caused by the Committee's review of the Application for a Certificate for Site and Facility is unnecessary in this case.

¹ The Committee notes that the Proposed Wind Power Siting Guidelines have not been adopted as law or by administrative rule making and have no legal effect on the Committee's determination of the Motion.

Therefore, the Committee finds that asserting jurisdiction would not advance the goal of avoiding undue delay.

C. Full and Complete Disclosure

The Committee notes that, in order to construct and operate the Project, the Applicant has undergone the review by local boards and officials, state and federal agencies including the Berlin Planning Board, the Department of Environmental Services, the Department of Transportation and the Federal Aviation Administration. . This review by local and state agencies has been a transparent process where all filings are available to the public and public participation was permitted at local hearings. The Applicant has not sought protective orders or confidential treatment for any of its filings. Transcript, p. 56. Additionally, the minutes from all of the various Planning Board and Zoning Board of Adjustment meetings are generally publically available. Committee review would add little to providing full and complete disclosure to the public of the Applicant's plans for the siting, construction and operation of this renewable energy facility.

D. Significant Aspect of Land Use Planning.

As noted above, in order to construct and operate the Facility, the Applicant will be required to undergo the review by the City Planner, the Zoning Board of Adjustment, and the Planning Board of the City Berlin. In this regard, the Applicant reports that it has already had favorable discussions with Berlin City Planner, Ms. Pamela Laflamme. In addition, the Committee notes that the Applicant is in the process of obtaining all of the necessary state permits bearing on land use planning considerations including a driveway permit and an alteration of terrain permit. The review by the local agencies taken together with the review conducted by the State agencies will ensure that the Project will be treated as a significant aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion. Therefore, the Committee finds that there is no need for further duplicative review by this Committee.

Conclusion

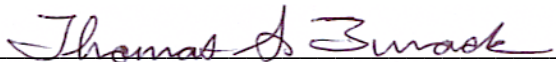
Having considered the record of this matter and the legal standards to be applied, a majority of the Committee finds that it is not necessary to assert Committee jurisdiction in this matter in order to comply with the purposes set forth at RSA 162-H:1. Mr. Knepper voted to deny the motion and assert jurisdiction over the project. Therefore, the Committee grants the Motion and will not require the Applicant to file an Application for a Certificate of Site and Facility.

Order

It is hereby Ordered that the Motion for Declaratory Ruling by Atlantic Design Engineers, Inc. on behalf of Jericho Power, LLC is **GRANTED**; and

It is hereby Further Ordered that a Certificate of Site and Facility is not required to undertake the Project as proposed in the Motion.

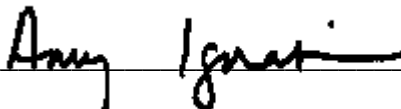
By Order of the Site Evaluation Committee this 18th day of March, 2013.



Thomas S. Burack, Commissioner
Dept. of Environmental Services
Chairman, NH Site Evaluation Committee

_____ March 18, 2013

Date



Amy L. Ignatius, Chairman
Public Utilities Commission
Vice Chairman, NH Site Evaluation Committee

_____ March 18, 2013


Date



Michael Harrington, Commissioner
Public Utilities Commission

_____ March 21, 2013

Date



Robert Scott, Commissioner
Public Utilities Commission

_____ March 18, 2013

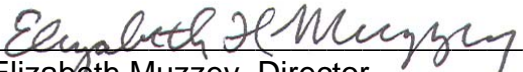
Date



Philip A. Bryce, Acting Commissioner
Dept. of Resources and Econ. Development

_____ March 21, 2013

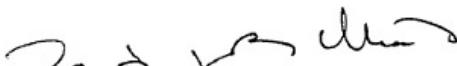
Date


Elizabeth Muzzey, Director
Division of Historical Resources
Dept. of Cultural Resources

April 1, 2013
Date


Craig Wright, Director
Air Resources Division
Department of Environmental Services

March 21, 2013
Date


Jeffrey Brillhart, Assistant Commissioner
Department of Transportation

March 20, 2013
Date