

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2013-02

**RE: Application of Atlantic Wind, LLC for a Certificate of Site and Facility for the Wild
Meadows Wind Project, Grafton and Merrimack Counties**

MOTION TO DEEM THE APPLICATION OF ATLANTIC WIND, LLC INCOMPLETE

NOW COMES the Wild Meadows Legal Fund (“WMLF”), by and through its attorneys, Rath, Young and Pignatelli, P.C., and respectfully moves for a decision pursuant to Site 301.05, from the Designated Chairperson of the New Hampshire Site Evaluation Committee (“SEC”) for the above-referenced docket, that the application (the “Application”) of Atlantic Wind, LLC (“Atlantic Wind”) is incomplete.

RSA 162-H and Site 301.03 establish clear standards for determining whether an application is complete, including requiring that an applicant hold the necessary site control rights to each aspect of the project. The application submitted by Atlantic Wind fails to meet this requirement. Specifically, the Application fails to demonstrate that Atlantic Wind holds the land rights necessary to build the interconnection transmission line and substation on the proposed site. Absent such information, the Commission should declare the Application incomplete and avoid expending valuable agency time and resources on a project that may never be built. In further support of this motion, WMLF states as follows:

1. On December 12, 2013, Atlantic Wind, LLC (“Atlantic Wind”), owner and developer of the Wild Meadows Wind Project (“Project”), filed an application to develop a 75.9 megawatt (MW) wind energy facility consisting of 23 wind turbines of 3.3 MW each, and associated access and interconnection infrastructure. The wind turbines are to be situated along the ridgelines in Alexandria and Danbury, New Hampshire. The ridgelines upon which the

turbines are proposed to be constructed overlook Newfound Lake, the third largest lake in New Hampshire, a major New Hampshire tourist attraction, and home to hundreds of full-time and seasonal residents.

2. Among the infrastructure Atlantic Wind proposes to construct – and must construct for the Project to be operational – is a series of underground and above-ground collector and interconnection transmission lines, as well as a substation. Application at 7-10; see also Appendix 1, Wetlands Permit Application at 3(#7) (“The Wild Meadows Wind Project will include up to 23 wind turbines ... [and] associated infrastructure including collector lines, access roads, a substation, a permanent meteorological tower, and an operations and maintenance building.”). As Atlantic Wind itself notes, the electrical interconnection or transmission line and substation are major parts of the proposed Project, (“[f]or this project the largest fixed costs are the substation/interconnection....”), Appendix 1, Section 9.I (Alternative 5). Thus, Atlantic Wind’s ability to build the Project, if approved by the SEC, hinges in part on whether it has site control over interconnection transmission lines and substation lands.

3. Atlantic Wind’s Application is incomplete because it fails to demonstrate site control over lands required for the development of the interconnection transmission line and substation, which is required in at least four places under the statute and rules governing the SEC. First, under RSA 162-H:7, V(b), “[e]ach application shall . . . [i]dentify both the preferred choice and any other choices for the site of each major part of the proposed facility.” As noted above, WMLF maintains that the network of new collector and interconnection transmission lines proposed by Atlantic Wind constitutes a “major part of the proposed facility.” Atlantic Wind must also include a statement with respect to “[w]hether the applicant is the owner or lessee of the site or facility or has some legal or business relationship to it,” Site 301.03(b)(6), must include a “property map” showing site acreage, Site 301.03(c)(2), and “[t]he location of

residences, industrial buildings, and other structures and improvements within or adjacent to the site,” Site 301.03(c)(3). The Application fails to meet these requirements.

4. The Application contains a series of topographical maps that outline the proposed routes of its interconnection line, but they lack the detail required for a complete Application. Application at 9-10. Neither these maps, nor the associated text in the Application, identify the parcels on which the wind turbines will be constructed or through which the interconnection transmission line will pass. Indeed, the topographic maps in the Application show no property boundaries at all. Nor do the Application’s maps show “[t]he location of residences, industrial buildings, and other structures and improvements within or adjacent to the site,” as required by Site 301.03(c)(3). Rather than showing the location of these structures, in its Application, Atlantic Wind undertakes a brief and vague description of the region in which the Project is sited, including a generalized categorization of the types of structures and residences “in and around” the Project area. Application at 11.¹

5. The Application’s vague and incomplete maps belie a more significant problem: Atlantic Wind does not appear to hold rights to all the lands on which it proposes to build its interconnection transmission line. RSA 162-H:7, V(b) presumes that a “preferred” site choice is a likely possibility, and without demonstrating site control over the interconnection path, Atlantic Wind’s preferred choice may not be possible. Indeed, the Wetlands Permit Application *admits* that a significant portion of the interconnection transmission line, and the substation, lie outside the “Lease Boundary Line” and presumably currently outside of Atlantic Wind’s site control. *See* Appendix 1, Sheet C 1.2. The Application nevertheless asserts that “Atlantic Wind has leases with the owners of the land where the Project is proposed to be built.” Application at 4.

¹ While there are more detailed maps contained in the Wetlands and Alteration of Terrain permit applications attached as Appendices 1 and 2, respectively, those maps are not appropriately cross-referenced in the Application to demonstrate compliance with the SEC regulations, and actually demonstrate a failure to comply with the SEC requirements.

Yet the Application fails to document that Atlantic Wind has a legal right to construct the interconnection transmission line and substation over the significant number of the properties through which it is shown to be located.² WMLF maintains that there is no basis for Atlantic Wind's statement indicating that it has secured rights to all the land needed to construct the Project, and therefore the Application is incomplete.

6. In addition to demonstrating site control under the SEC's rules, Atlantic Wind must also "satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency's completed application forms." RSA 162-H:7, IV; *see also* Site 301.03(d)(2) (requiring a complete application to include "Documentation that demonstrates compliance with the application requirements of [each agency having jurisdiction]."). Demonstrating site control over every aspect of the Project is a requirement for the Alteration of Terrain Permit, Env-Wq 1503.08(1), and for the Wetlands Permit, Wetlands Permit Application Form at § 3. In both of those permit applications, Atlantic Wind identifies the interconnection transmission line and substation, including identifying the individual parcels on which those Project elements lie. *See* Appendix 1, Design Sheet C 1.2 and C 9.1; Appendix 2, Application Table of Tax Map Parcels; Appendix 2, Lease Documents. However, in neither the Wetlands nor the Alteration of Terrain permit applications does Atlantic Wind demonstrate that it holds a property interest in *all* the lands required for the interconnection transmission line and substation. Indeed, as noted above, both applications indicate the opposite – that Atlantic

² Atlantic Wind's Alteration of Terrain Permit application identifies twelve lots that comprise the Project site, owned by seven different land owners. However, lease documents included with that application demonstrate that Atlantic Wind only holds leases with two land owners that together give it rights to five of the twelve Project parcels. Appendix 2, Application Table of Tax Map Parcels; Appendix 2, Lease Documents.

Wind does not hold all the necessary land rights. Appendix 1, Sheet C 1.2; Appendix 2, Application Table of Tax Map Parcels; Appendix 2, Lease Documents.

7. Insofar as the Wetlands and Alteration of Terrain permits require an application to demonstrate site control over the entire Project area, meeting that requirement is incorporated into the SEC's completeness determination under Site 301.03(d)(2). By failing to meet the requirements for a complete Wetlands and Alteration of Terrain permit application, Atlantic Wind's Application to the SEC must also be deemed incomplete.

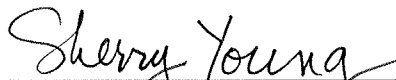
8. Pursuant to Site 202.14, counsel for WMLF sought to contact counsel for Atlantic Wind to obtain its concurrence with respect to this petition but was unable to reach them.

WHEREFORE, WMLF respectfully requests that that the designated Chairperson determine that the Application of Atlantic Wind, LLC is incomplete and require Atlantic Wind to augment its Application to identify the particular parcels of land over which it intends its interconnection transmission lines to run and where the substation will be constructed, identify the residences and other structures within and abutting the Project site, and demonstrate that it has the necessary legal rights to build the *entire* Project on the proposed site.

Respectfully Submitted

WILD MEADOWS LEGAL FUND

By its Attorneys,



Sherilyn Burnett Young (NH Bar #2700)

Eric Macaux (NH Bar #265408)

Michael S. Lewis (NH Bar #16466)

Rath, Young and Pignatelli, P.C.

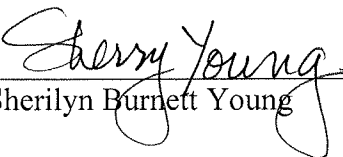
1 Capital Plaza

Concord, New Hampshire 03301

(603) 226-2600

CERTIFICATE OF SERVICE

I hereby certify that on this day, January 7, 2014, a copy of the foregoing motion sent by electronic mail or U.S. Mail, postage prepaid, to persons named on the Service List of this docket.



Sherilyn Burnett Young