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January 10, 2014

VIA HAND DELIVERY

Amy Ignatius, Chairwoman
Site Evaluation Committee
29 Hazen Drive
Concord, NH 03301-2429

**Re: SEC Docket No. 2013-02: Application of Atlantic Wind, LLC for a
Certificate of Site and Facility for a Renewable Energy Facility for the Wild
Meadows Wind Project**

Dear Commissioner Ignatius:

Enclosed for filing in the above-referenced docket, please find an original and 18 copies of an Objection to the Motion of Wild Meadows Legal Foundation To Deem the Application of Atlantic Wind, LLC Incomplete.

Please contact me with any questions.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Barry Needleman by gHS".

Barry Needleman

cc: Michael J. Iacopino, Esq.
Sherilyn Burnett Young, Esq.

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

APPLICATION OF ATLANTIC WIND, LLC FOR A CERTIFICATE OF SITE AND
FACILITY FOR THE WILD MEADOWS WIND PROJECT

DOCKET NO. 2013-02

**OBJECTION TO MOTION OF WILD MEADOWS LEGAL FOUNDATION TO DEEM
THE APPLICATION OF ATLANTIC WIND, LLC INCOMPLETE**

Applicant Atlantic Wind, LLC (“Atlantic Wind”) respectfully submits this Objection to the Motion to Deem the Application of Atlantic Wind, LLC Incomplete by non-party Wild Meadows Legal Fund (“WMLF”), and requests that the New Hampshire Site Evaluation Committee (“SEC”) deny the motion as procedurally improper and as a matter of law. In support of its objection, Atlantic Wind states as follows:

I. WMLF is Not a Party to This Docket

1. WMLF has filed a motion seeking action by and relief from the SEC notwithstanding the fact that it is not yet a party to this matter.

2. The SEC’s procedural rules specifically contemplate that motions shall be made by a “party.” *See* Site 202.14(c), (d). A “party” is defined as “each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.” RSA 541-A:1, XII. The New Hampshire Supreme Court has rejected the arguments of an appellant claiming party status where the appellant has failed to provide evidence that it was admitted as a party in the underlying proceedings. *In re Town of Nottingham*, 153 N.H. 539, 549-50 (2006).

3. WMLF has filed a petition to intervene that is premature as the Application of Atlantic Wind has not yet been accepted and no notice of hearing has been issued. WMLF is therefore not properly seeking and entitled as a right to be admitted as a party. Atlantic Wind respectfully

submits that the SEC should not consider motions unless made by parties admitted to the proceedings.

4. Furthermore, determination of the completeness of an application for a certificate for a renewable energy facility is to be predicated upon (1) a “preliminary review” conducted by the SEC chairperson or designee “to ascertain whether the application contains sufficient information to carry out the purposes of [RSA 162-H]” and (2) a preliminary review by any state agency having jurisdiction over some aspect of the construction or operation of the proposed facility to ascertain whether the application contains sufficient information for its purposes. RSA 162-H:6-a, I, II; RSA 162-H:7, IV. To the extent that the jurisdictional state agencies and the SEC commissioner or designee deem an application sufficient to carry out the purposes of RSA 162-H, that is all that is required for acceptance of the application. The statute provides for an administrative process that must be complete within a short (30 day) period of time; it does not allow for, and is not consistent with, motion practice seeking denial or approval of an application.

5. For the reasons stated above, WMLF’s Motion to Deem the Application of Atlantic Wind, LLC Incomplete should be denied as procedurally improper.

II. WMLF Fundamentally Misreads RSA Chapter 162-H and Site 301.03

6. The crux of WMLF’s motion is its claim that Atlantic Wind’s Application “fails to demonstrate site control over lands required for the development of the interconnection and transmission line and substation.” WMLF Motion ¶3. WMLF asserts that demonstrating “site control” is “required in at least four places under the statutes and rules governing the SEC.” *Id.* However, none of the authority cited by WMLF establishes such a requirement. Thus, while Atlantic Wind maintains that its Application is indeed sufficient for the purposes of RSA 162-H,

the SEC need not consider the substance of WMLF's arguments because the very premise of its motion is fundamentally and fatally flawed.

7. WMLF first notes that RSA 162-H:7 requires applicants to "identify both the preferred choice and any other choices for the site of each major part of the proposed facility." WMLF Motion ¶ 3. WMLF does not claim that Atlantic Wind has failed to do so. Rather, it asserts, without evidence or other support, that certain elements of the proposed project constitute a "major part of the proposed facility." *Id.*

8. WMLF then cites to following application requirements and claims that Atlantic Wind has failed to meet them:

- a. Site 301.03(b)(6), requiring that an application contain a statement as to "whether the applicant is the owner or lessee of the site or facility or has some legal or business relationship to it."
- b. Site 301.03(c)(2), requiring that an application include "site acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map."
- c. Site 301.03(c), requiring that an application include "the location of residence, industrial buildings, and other structures and improvements within or adjacent to the site."

It is manifest from a plain reading of these requirements that none of them obligate an applicant to "demonstrate site control" over lands necessary to the development of the project.

9. Site 301.03(b)(6) merely requires a statement as to whether the applicant owns, leases, or has a legal or business relationship with the site or facility. The Application contains such a statement, and the Atlantic Wind has unquestionably satisfied this requirement. *See* Application of Atlantic Wind, LLC for Certificate of Site and Facility ("Application") at pp. 3-4. Even assuming, hypothetically, that an applicant provides a statement that it does not own, lease, or have a business or legal relationship to a proposed site or facility, nothing in Site 301.03(b)(6)

states or even suggests that such a statement would be a bar to acceptance of an application. Rather, it is information that the SEC requires to conduct its broader evaluation of the application.

10. Site 301.03(c)(2) requires inclusion of “site acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map.” The Application contains two maps meeting these criteria, and they are substantially similar to maps that were submitted and deemed sufficient for the same purpose by the SEC in Docket 2010-01. *See* Application of Groton Wind, LLC for a Certificate of Site and Facility at 7-8 (March 26, 2010). WMLF claims that the maps are deficient because they do not “identify the parcels on which the wind turbines will be constructed or through which the interconnection line will pass,” and because they “show no property boundaries.” WMLF Motion ¶4. Nothing in Site 301.03(c)(2) requires that “parcels of land” be identified or that property boundaries within the site acreage be drawn, and WMLF is simply asking the SEC to read into the rule requirements that not expressly set forth therein. Nevertheless, as WMLF itself acknowledges, a map delineating property lines within the site area is included at Section 9.E of Atlantic Wind’s Wetlands Permit Application Attached as Appendix A to the Application. The Application satisfies the requirements of Site 301.03(c)(2) and contains sufficient information to carry out the purposes of RSA chapter 162-H.

11. WMLF argues that the Application is incomplete because it does not contain maps showing “the location of residences, industrial buildings, and other structures and improvements within or adjacent to the site, as required by Site 301.03(c)(3).” It is plain on the face of Site 301.03(c)(3) that no such map is required. Rather, Site 301.03(c)(3) merely requires a description of the necessary information, and the Application contains a statement providing the required description. *See* Application at p. 4. Moreover, a tax map and list of abutters is

included at Section 9.H of Atlantic Wind's Wetlands Permit Application Attached as Appendix A to the Application. The Application satisfies the requirements of Site 301.03(c)(3) and contains sufficient information to carry out the purposes of RSA chapter 162-H.

12. WMLF also contends that the Application is incomplete because Atlantic Wind "does not appear to hold rights to all the lands on which it proposes to build its interconnection line." WMLF Motion ¶ 5. However, it cites to no requirement in the SEC rules or RSA chapter 162-H mandating that such rights be held and proven at the time an application is submitted pursuant to RSA 162-H:7. WMLF also challenges Atlantic Wind's statement in the Application that it "has leases with the owners of the land where the project is proposed to be built" on the asserted grounds that Atlantic Wind has not demonstrated a "legal right to construct the interconnection transmission line and substation over the significant number of the properties through which is its shown to be located." WMLF Motion ¶ 5. This argument suggests a misunderstanding of the property rights at issue. Atlantic Wind has, in fact, entered into leases to construct all major components of the proposed project, including the wind turbines, access roads, and operations and maintenance facility. The collector system lines will cross easements and rights of way rather than "leased" land, and the substation will be located on property purchased by Atlantic Wind, LLC. Atlantic Wind is in the process of negotiating and finalizing the necessary easements and purchase agreements that will allow for the interconnection and substation.

13. The basic premise underlying WMLF's motion – that an applicant must demonstrate complete control over and hold legal right to all property upon which a site or facility will be located at the time an application is filed – has no basis in RSA chapter 162-H or the SEC rules. WMLF cites to no decision of the SEC imposing such a strenuous requirement. The Application contains all information required by Chapter Site 300 and should therefore be accepted.

III. WMLF Misreads Env-Wq 1503.08(1) and the Wetlands Permit Application Form

14. WMLF correctly notes that an application for site and facility must contain sufficient information to “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.” WMLF Motion ¶ 6; RSA 162-H:7, IV. WMLF does not dispute that Atlantic Wind provided the required application forms. Instead, it argues that “[d]emonstrating 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.” This argument is easily disproven, as Env-Wq 1503.08(1) and the Wetland Permit Application Form impose no such requirement.

15. Env-Wq 1503.08(1) requires an applicant for an Alternation of Terrain Permit that does not own the property subject to the permit to “submit proof that [it] will have a legal right to undertake the project on the property if a permit is issued to the applicant.” The rule plainly does not mandate that an applicant possess “site control” at the time the application is made.

16. WMLF’s argument that Wetlands Permit Application Form §3 requires a demonstration of “site control over every aspect of the Project” is also completely without merit. Wetlands Permit Application Form §3 is merely the portion of the form in which property owner information is entered. It does not mandate proof of “site control over every aspect of the project” either explicitly or even implicitly. Thus, WMLF’s motion is predicated on upon a fundamentally flawed premise and must be denied.

WHEREFORE, Atlantic Wind respectfully requests that the Committee deny WMLF’s Motion to Deem the Application Incomplete.

Respectfully submitted,

Atlantic Wind, LLC

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: January 10, 2014

By: Barry Needleman by gts
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Patrick H. Taylor, Esq. Bar # 17171
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Certificate of Service

I hereby certify that on this 10th day of January, 2014, I served the foregoing Objection by electronic mail or U.S. Mail, postage prepaid to the service list in this docket.

Barry Needleman by gts
Barry Needleman, Esq.