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January 17, 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 the following pleadings:

1. Applicant's Objection to Petition to Intervene by Society for the Protection of New Hampshire Forests
2. Applicant's Objection to Petition to Intervene by Wild Meadows Legal Fund
3. Applicant's Objection to Petition to Intervene by New Hampshire Wind Watch

Please contact me with any questions.

Sincerely,

Barry Needleman by AMD

Barry Needleman

cc: Service List

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

APPLICANT'S OBJECTION TO PETITION TO INTERVENE
BY NEW HAMPSHIRE WIND WATCH

NOW COMES the Applicant, Atlantic Wind, LLC ("Atlantic Wind"), and respectfully submits this Objection to the Petition to Intervene by New Hampshire Wind Watch ("NHWW") and requests that the New Hampshire Site Evaluation Committee ("SEC") deny NHWW's petition, or alternatively, limit NHWW's participation in the proceedings.

I. Introduction

On December 12, 2013, Atlantic Wind, LLC ("Atlantic Wind"), owner and developer of the Wild Meadows Wind Project (the "Project"), filed an application to develop a 75.9 megawatt (MW) wind energy facility situated along the ridgelines in Alexandria and Danbury, New Hampshire. By petition dated January 10, 2014, NHWW seeks to intervene in this proceeding.

There is no doubt that parties with legitimate and concrete interests, who can properly satisfy legal requirements for standing, should be permitted to participate in proceedings such as this. That is their legal right. Conversely, applicants like Atlantic Wind also have due process rights in such proceedings which include ensuring opposing parties actually meet the specific standing requirements of law, *Appeal of Stonyfield Farm*, 159 N.H. 227, 231 (2009), and that the scope of any intervention be appropriately limited to ensure the "orderly conduct of the proceedings." RSA 541-A:32, I (3). In this case, the NHWW pleadings fall far short of demonstrating the types of specific interest that would entitle them to participate in the

proceeding. Thus, their motion should be denied or, in the alternative, the scope of their intervention should be limited and their roles consolidated with similarly situated interveners.

II. Standard for Intervention

Pursuant to RSA 542-A:32, I and Site 202.11, in order to intervene in a SEC proceeding: (1) the petitioner must properly file a petition; (2) the petitioner must establish that its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and (3) that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. RSA 541-A:32, I; N.H. Code Admin R., Site 202.11(b). Here, NHWW does not meet the fundamental requirements of RSA 542-A:32, I and Site 202.11. Therefore, its Petition should be denied.

III. NH Wind Watch Does Not Have a Substantial Interest Which May be Affected by this Proceeding

NHWW is a member-based nonprofit organization in the Newfound Lake region allegedly comprised of approximately 2,000 members. It is, by its own description, an advocacy organization “dedicated to providing education and information about Industrial Wind Power Projects in New Hampshire.” See <http://www.nhwindwatch.org>; see also *Petition of NHWINDWATCH to Intervene, Re: Application of Atlantic Wind, LLC for a Certificate of Site and Facility for the Wild Meadows Wind Project*, Docket No. 2013-02, at 1 (Jan. 10, 2014). NWW states that “[a]ll board members, core volunteers, and a significant portion of the general membership own property located either in close proximity to the proposed project site, or in an area nearby enough to be impacted by the proposed project.” *Petition of NHWINDWATCH*, at 2. The Petition also alleges that many of NHWW’s members recreate in the properties that are located near the proposed Project site, including snowmobiling, hiking, hunting, and swimming.

Notwithstanding these allegations, it is unclear how many of its members reside in New Hampshire or live in the immediate vicinity of the Project.

NHWW claims that it has a right to intervene in the proceedings because:

1. “Many members of NHWindWatch will experience unobstructed views of the proposed project from home, or from where they recreate in the area.
2. “Amongst the sound, aesthetic, environmental, property value, economic, and other expected impacts of the proposed project, members of NHWindWatch will be specifically impacted because of the proximity of the proposed project to their homes and recreational areas.”

Id.

A. NHWW Has Alleged Insufficient Facts for the Committee to Grant NHWW’s Motion to Intervene

NHWW must set forth enough facts to demonstrate that it has a legal right to intervene. *See* RSA 541-A:32, I (b); *Appeal of Stonyfield*, 159 N.H. at 231 (stating that “a party must demonstrate this his rights ‘may be directly affected by the decision, or in other words, that he has suffered or will suffer an injury in fact.’”) (quoting *Appeal of Richards*, 134 N.H. 148, 154 (1991)). General allegations of harm are not sufficient. *See Blanchard v. Railroad*, 86 N.H. 263, 264 (1933) (finding that standing does not exist if a party cannot establish that it has an “interest[] in or is affected by the proceedings in some manner differently from the public, citizens, and taxpayers generally”) (citing *Bennett v. Tuftonborough*, 72 N.H. 63, 64 (1903)). NHWW has not met either requirement.

The Committee is well aware of the importance of adhering to the strict timetable established in the statute. *See e.g. Order Determining Application to be Incomplete, Re: Application of Atlantic Wind, LLC*, Docket 2013-02, at 9 (Jan. 13, 2014). The first step is ensuring that parties have a legitimate, concrete, well-defined interest in the matter and that their

participation will not interfere with the “orderly conduct of the proceedings.” RSA 541-A:32, I (3).

Here, NHWW has failed to establish enough facts for the Committee to allow a motion to intervene. NHWW simply states “[m]any members of NHWindWatch will experience unobstructed views of the proposed project from home, or from where they recreate in the area[] and “[a]mongst the sound, aesthetic, environmental, property value, economic, and other expected impacts of the proposed project, members of NHWindWatch will be specifically impacted because of the proximity of the proposed project to their homes and recreational areas.” *Petition of NHWINDWATCH*, at 2. The mere allegation that some individual members of NHWW may be affected by the Project is not sufficient to show that NHWW, which by its own description is an organization with a state-wide mission to “provid[e] education and information about Industrial Wind Power Projects,” will itself have “rights, duties, privileges, immunities or other substantial interests” affected by this proceeding. NHWW was not formed for the purpose of representing individual property owners in matters before the SEC, nor does it allege that it has been designated as the representative for any particular individuals claiming a specific interest in this proceeding. Rather, NHWW is transparently seeking to intervene for the purposes of advancing broader policy arguments in opposition to the Project.

Notwithstanding its fundamental lack of standing in this proceeding, NHWW fails to provide any facts or concrete links to the Project to substantiate its claims. Even assuming, *arguendo*, that NHWW could act as representative for individual members, it must provide a more definite statement from NHWW linking specific members to specific alleged harms so that their allegations of standing can be properly assessed and that, to the extent they actually may have standing, the scope of their intervention can be appropriately limited.

Ensuring that these issues are properly addressed is especially important in an SEC proceeding given the role of Public Counsel. By law, Public Counsel is a party to this proceeding charged with protecting the broad public interest. *See* RSA 162-H:9. Potential interveners must distinguish their interest in a manner that makes clear they will not overlap with, and repeat the efforts of Public Counsel, thereby subjecting the applicant to duplicative discovery requests, duplicative expert opinions and duplicative testimony. *See Blanchard*, 86 N.H.at 264 (requiring allegations of harm different from those suffered by the general public). Such an outcome would be manifestly unfair to the Applicant, it would be a substantial waste of resources and it would certainly violate the statutory mandate requiring that interveners not interfere with the orderly conduct of the proceedings.

1. Aesthetics and Recreation

NHWW asserts that many of its members will “experience unobstructed views of the proposed project from home, or from where they recreate.” However, as described above, NHWW is an advocacy group “dedicated to providing education and information about industrial wind projects”; as such, it cannot claim any “right, duty, privilege, immunity or other substantial interest” that may be affected by the proceeding, particularly with respect to aesthetics, property values, economic issues, and recreating upon Newfound Lake. *See Appeal of Richards*, 134 N.H at 156 (stating that while an association may have standing to represent specific members that have been injured, an association does not have standing to challenge an action based upon a “mere interest in a problem”) (quoting *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)). Addressing property values and recreation upon Newfound Lake is simply not within the scope of the organization’s stated mission, and NHWW does not make the argument that it otherwise qualifies as an intervenor under any provision of law.

NHWW has failed to establish how these facts create any specific harm that differs from the general public. *Blanchard*, 86 N.H. at 264. In fact, NHWW's contention—that their members will have an unobstructed view of the Project—is substantially the same argument that any individual living near the lake or visiting the area would make. Therefore, NHWW's argument does not give rise to the organization having a substantial interest in the proceedings. *See Order on Pending Motions, Re: Application of Laidlaw Berlin BioPower, LLC*, Docket No. 2009-02, at 5–6 (March 24, 2010) (denying a petition to intervene where the petitioner had not demonstrated a substantial interest in the proposed project that differed from the public at large); *Appeal of Richards*, 134 N.H. at 156 (finding that an individual or group does not have standing if the proposed action affects the public in general, particularly when the affected public interest is represented by an authorized state official); *see also Granite Reliable Power, LLC*, Docket No. 2008-04, at 4 (finding that mere residence in a county, even coupled with participation in recreational activities, i.e. hunting and fishing, does not rise to the level of a substantial interest).

2. Property Values

NHWW also argues that the Project may affect property values. Again, NHWW has failed to establish how such harm might occur and which specific members might be subjected to such harm. The lack of specificity here makes it impossible to ascertain if NHWW should be granted standing for this issue and if so, how its role should be limited and/or consolidated with other parties. NHWW has failed to demonstrate that it may be “directly affected by the decision, or in other words, [that NHWW] has suffered or will suffer an injury in fact.” *Appeal of Stonyfield*, 159 N.H. at 231. *See also Appeal of Campaign For Ratepayers Rights*, 142 N.H. 629, 632 (1998).

3. Economic Development of the Region

NHWW argues that the region's economy will be adversely affected by the Project. Such sweeping assertions, unsupported by concrete allegations tied to specific interests of the group's members, and squarely overlapping with the exact type of interests the Public Counsel will address, cannot possibly be the basis for standing on this issue.

NHWW is made up of "individuals dedicated to providing education and information about industrial wind power projects." *Petition of NHWINDWATCH*, at 1. NHWW has not alleged that its subscribers include businesses or business owners in the region. On its face, NHWW has failed to allege the kind of concrete harm to specific members that is necessary to establish standing. *See Order on Motions to Intervene and Further Procedural Order, Re: Joint Motion of Laidlaw Berlin Biopower, LLC*, Docket 2011-01, at 5 (May 2, 2011) (stating that the petitioner's concerns about electric rates, general economy of the area, and concern for the health of the northern forest alone would not be sufficient to establish a substantial interest for purposes of intervention).¹

Further, while NHWW argues that they have a right to intervene because the region's economic development may be affected, NHWW fails to assert that they are "interested in or affected by the proceedings in some manner differently from the public, citizens, and taxpayers generally." *Bennett v. Tuftonborough*, 72 N.H. 63, 64 (1903); *Appeal of Richards*, 134 N.H. at 156. NHWW "ha[s] alleged nothing distinguishing their right and interest from that of other citizens and taxpayers." *Bennett*, 72 N.H. at 64.

¹ In *Joint Motion of Laidlaw Berlin Biopower, LLC* the SEC nevertheless allowed the petitioner's motion to intervene because it had ownership and contingent ownership of properties near the project area. *Id.* at 5.

4. Acoustics and Environmental Issues

NHWW also alleges that the project will create negative acoustic and environmental effects that impair the region. However, as discussed *supra*, this argument does not amount to an actual or immediate injury; NHWW fails to establish one single link between the proposed project and impacts on acoustics and the environment in the region. First, NHWW has not established a substantial interest in the proposed project that differs from the public at large. Second, NHWW makes an unsubstantiated claim that the project will negatively affect the acoustics and the environment of the region. Third, NHWW's arguments will most certainly overlap with the role played by Public Counsel to intervene on these topics would create unnecessary repetition and create a very significant risk that the orderly conduct of the proceedings would be adversely affected.

5. "Other Associated Impacts"

Insomuch as NHWW claims that the project may have "other expected impacts of the proposed project . . . because of the proximity of the proposed project to their homes and recreational areas," the Applicant respectfully requests that the Committee deny NHWW's request to intervene. Making blanket assumptions that NHWW and its members will be impacted by the project in some vague and speculative way is not sufficient to allow intervention. It is also unquestionably the type of generalized standing allegation that has been rejected in the past and would certainly lead to substantial overlap with the role of Public Counsel.

IV. Alternatively, if the Committee Grants NHWW's Petition to Intervene, It Should Limit Its Participation Pursuant to RSA 541-A:32, III and Site 202.11(d)

The New Hampshire Administrative Procedure Act and the New Hampshire Code of Administrative Rules provide that if the SEC allows a Petition to Intervene, the SEC may place

limits on an intervener's participation. In this case, to the extent any portion of the NHWW motion is granted, the SEC should limit NHWW's role in the proceedings only to specific issues where it can demonstrate that: NHWW clearly and unequivocally has standing; that the Committee believes that its own efforts and those of the Public Counsel may not adequately address an issue, such that NHWW's involvement is necessary; and that NHWW's involvement would not be duplicative and would not risk interfering with the orderly conduct of the proceedings.

The Committee has limited the role of intervenors in the past. *Order on Pending Motions, Re: Application of Laidlaw Berlin BioPower, LLC*, Docket No. 2009-02 at 3–5 (March 24, 2010). In analyzing three separate motions to intervene in the *Laidlaw* case, the Committee limited the participation of each intervenor, pursuant to RSA 541-A:35, III and Site 202.11(d), to only the issues where the petitioner could clearly demonstrate that it had a particular interest in the petition.

If the Committee allows NHWW to intervene, Atlantic Wind respectfully requests that NHWW's participation in these proceedings be limited only to those issues in which NHWW has demonstrated a substantial interest that is separate and distinct from the generalized type of broad public interests that do not give rise to standing and, in this proceeding, will be addressed by Public Counsel.

To the extent that NHWW is allowed to intervene, and there are other groups or individuals intervening under substantially similar circumstances, the Applicant respectfully requests that the Committee combine the interveners into groups with similar interests to ensure the timely and orderly conduct of the proceedings.

In the past, the SEC has routinely combined two or more intervenors into one group in order to limit the presentation of evidence, arguments, and cross-examinations. In *Report of Prehearing Conference and Technical Session and Procedural Order, Re: Application of Groton Wind, LLC*, Docket No. 2010-01 (June 25, 2010), numerous residents of the Town of Rumney moved to intervene. The presiding officer allowed the residents of Rumney to intervene because the SEC found that each resident lived within close proximity to the proposed site and each resident may suffer an individualized harm from the construction of the project—either as a result of perceived health and safety issues, or by virtue of the reduction of the value of their real property. *Id.* at 7. The presiding officer, however, consolidated the residents together because the presiding officer found that all of the residents were “concerned about the same or similar issues and are similarly situated” and that “separate intervention of each resident could lead to unnecessary repetition and interfere with the prompt and orderly conduct of the proceedings.” *Id.* See also *Order on Motions to Intervene, Re: Application of Antrim Wind Energy, LLC*, Docket No. 2012-01 (May 18, 2012) (allowing motion to intervene while consolidating abutting landowners into two groups).

Respectfully submitted,

Atlantic Wind, LLC

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: January 17, 2014

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Certificate of Service

I hereby certify that on this 17th 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 AMD
Barry Needleman, Esq.