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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  
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**

NOW COMES the Applicant, Atlantic Wind, LLC ("Atlantic Wind"), and respectfully submits this Objection to the Petition to Intervene by Society for the Protection of New Hampshire Forests (the "Forest Society") and requests that the New Hampshire Site Evaluation Committee ("SEC") deny the Forest Society's petition, or alternatively, limit the Forest Society'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, the Forest Society 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 that 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 Forest Society's petition falls far short of

demonstrating the types of specific interests that would entitle them to participate in the proceeding in the manner they request. Thus, their petition 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, the Forest Society does not meet the fundamental requirements of RSA 542-A:32, I and Site 202.11. Therefore, its Petition should be denied.

## **III. The Forest Society Does Not Have a Substantial Interest Which May be Affected by this Proceeding**

The Forest Society is a “private, non-profit membership organization dedicated to protecting the state’s most important landscapes while promoting the wise use of its renewable natural resources.” *Petition to Intervene of the Society for the Protection of New Hampshire Forests, Re: Application of Atlantic Wind*, Docket No. 2013-02 (Jan. 10, 2014).

The Forest Society asserts that it has over 10,000 members and that it holds property interests in over 187,000 acres of land in New Hampshire. Further, the Forest Society alleges that it holds property interests in twenty-two (22) parcels of land totaling 7,251 acres within a ten-mile radius of the proposed project’s center point.

The Forest Society asserts that it should be allowed to intervene, stating that: “[a]mongst the sound, aesthetic, environmental, property value, economic, and other expected impacts of the project, the Forest Society and its members will be specifically impacted because of the proximity of the project to its real estate holdings.”

**A. The Forest Society Has Alleged Insufficient Facts for the Committee to Grant The Forest Society’s Motion to Intervene**

The Forest Society 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)). The Forest Society 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, the Forest Society has failed to establish enough facts for the Committee to allow a motion to intervene. The Forest Society simply states “[a]mongst the sound, aesthetic, environmental, property value, economic, and other expected impacts of the project, the Forest

Society and its members will be specifically impacted because of the proximity of the project to its real estate holdings.” *Petition of the Forest Society*, at 3. The Forest Society, however, fails to provide any solid facts or concrete links to the project to substantiate its claims that it or its members will be substantially affected by the proceeding. By its own acknowledgment, the Forest Society is a very large (10,000 members), statewide organization with a broad policy mission to “protect[] the state’s most important landscapes while promoting the wise use of its renewable resources.” *Petition of the Forest Society* at 1. At the very least, before acting on the motion, the Committee should require a more definite statement from the Forest Society articulating specific alleged harms to it or its members so that its allegations of standing can be properly assessed and that, to the extent it actually may have standing, the scope of its 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. Such an outcome would be manifestly unfair to the Applicant, it would be a substantial waste of resources and it would no doubt violate the statutory mandate requiring that interveners not interfere with the orderly conduct of the proceedings.

## 1. Aesthetics

The interests alleged by the Forest Society are insufficient to provide a basis to grant the Forest Society's Petition for intervention. The Forest Society asserts that it and its members will be specifically impacted because of the proximity of the project to its real estate holdings.

However, as described above, the Forest Society is an advocacy group "dedicated to protecting the state's most important landscapes while promoting the wise use of its renewable natural resources"; 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, and economic issues. *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 aesthetics, property values and economic issues is simply not within the scope of the organization's stated mission, and the Forest Society does not make the argument that it otherwise qualifies as an intervenor under any provision of law.

The Forest Society also alleges that "the property boundary of one parcel, the Butman easement in Alexandria, is within one mile from the northern-most turbines in the proposed project, and the boundaries of several other parcels, including the Sudrabin Forest and Catterall Forest, are within 3 to 4 miles of the proposed turbine locations."

The Forest Society does not allege that any of its members own property that abuts the project. At best, the Forest Society asserts that one of its properties is located within one mile of the proposed Project, while others are located within three to four miles, and the final properties are located within five to ten miles of the Project. The Forest Society fails to provide a

description of how the proposed Project will affect the aesthetics of conservation easements or fee-owned forest reservations. As such, the Forest Society has not demonstrated any specific harm that one of its properties or one of its members will be directly impacted. *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)).

The Forest Society has also failed to establish how these facts create any specific harm that differs from the general public. *Id.* In fact, the Forest Society’s contention—that they will be impacted because of the proximity to its real estate holdings—is substantially the same argument that any individual living near the project. Moreover, the Forest Society fails to make any link whatsoever between the proposed project and how the Forest Society and its members will be impacted. Therefore, the Forest Society’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

The Forest Society also argues that the Project may affect property values. Again, the Forest Society 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 the Forest Society should be granted standing for this issue and if so, how its role should be limited and/or consolidated with other parties. The Forest Society has failed to demonstrate that it may be “directly affected by the decision, or in other words, [that the Forest Society] 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

The Forest Society 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.

The Forest Society has not alleged that its subscribers include businesses or business owners in the region. On its face, the Forest Society 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 petitioners’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).<sup>1</sup>

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<sup>1</sup> 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.



Further, while the Forest Society argues that they have a right to intervene because the region's economy may be affected, the Forest Society 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.. The Forest Society "ha[s] alleged nothing distinguishing their right and interest from that of other citizens and taxpayers." *Bennett*, 72 N.H. at 64.

#### **4. Acoustics and Environmental Issues**

The Forest Society 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; the Forest Society fails to establish one single link between the proposed project and impacts on acoustics and the environment in the region. First, the Forest Society has not established a substantial interest in the proposed project that differs from the public at large. Second, the Forest Society makes an unsubstantiated claim that the project will negatively affect the acoustics and the environment of the region. Third, the Forest Society's arguments will be adequately addressed by Public Counsel, as such allowing the Forest Society to intervene on these topics would create unnecessary repetition and create substantial risk that the orderly conduct of the proceedings would be jeopardized.

#### **5. "Other Expected Impacts"**

Insomuch as the Forest Society claims that the project may have "other expected impacts of the proposed project . . . because of the proximity of the of the project to its real estate holdings" the Applicant respectfully requests that the Committee deny the Forest Society's request to intervene. Making blanket assumptions that the Forest Society 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. Regarding this assertion, the Forest Society must put forth a clear and concise statement justifying intervention. *See* RSA 542-A:32, I.

**IV. Alternatively, if the Committee Allows the Forest Society'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 intervenor's participation. In this case, to the extent any portion of the motion is granted, the SEC should limit the Forest Society's role in the proceedings only to specific issues where it can demonstrate that: the Forest Society 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 the Forest Society's involvement is necessary; and that the Forest Society'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 the Forest Society to intervene, Atlantic Wind respectfully requests that the Forest Society's participation in these proceedings be limited only to those

issues in which the Forest Society 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 the Forest Society 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 17<sup>th</sup> 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.