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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 WILD MEADOWS LEGAL FUND

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

I. Introduction

On December 12, 2013, 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 7, 2014, WMLF 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 WMLF 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, WMLF does not meet the fundamental requirements of RSA 542-A:32, I and Site 202.11. Therefore, its Petition should be denied.

III. WMLF Does Not Have a Substantial Interest Which May be Affected by this Proceeding

WMLF is a group consisting of five Newfound Lake homeowners associations, including Whittmore Shores Condominium Association, Hillside Inn Condominiums, Red Fox Village, Manor Estates, and Sunset Heights. *Petition to Intervene by Wild Meadows Legal Fund, Re: Application of Atlantic Wind, LLC*, Docket No. 2013-02, at 1–2 (Jan. 7, 2014). It is unclear how many WMLF members are New Hampshire residents.

WMLF claims that it has a right to intervene essentially based on five (5) contentions:

1. WMLF will suffer negative aesthetic consequences of the Project including a clear and unobstructed view of the Project from their residences and from various viewsheds around the lake; and a clear and unobstructed view of the Project while participating in recreational activities on the lake;

2. WMLF members will be harmed by the Project to the extent that it will diminish their property values within the viewshed;
3. The region's tourism industry will be negatively affected by the Project;
4. The region's orderly economic development will be affected; and
5. Other associated impacts to its members due to their proximity to the Project

Id. at 3.

A. **WMLF Has Alleged Insufficient Facts for the Committee to Grant Its Motion to Intervene**

WMLF 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)). WMLF 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, WMLF has failed to establish enough facts for the Committee to allow intervention. WMLF simply states that its members will suffer negative aesthetic consequences and that WMLF members will be harmed to the extent that the Project negatively affects property values, tourism, economic development and other associated impacts. WMLF, however, fails to provide any solid facts or concrete links between the alleged harms, the project and specific WMLF members. At the very least, before acting on the motion, the Committee should require a more definite statement from WMLF 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

WMLF asserts that “many WMLF members will have a clear and unobstructed view of the Project from their residences and from various public viewsheds from on and around the lake.” *Petition to Intervene by Wild Meadows Legal Fund*, at 4. The Petition also alleges that

“WMLF members will . . . have clear and unobstructed views of the Project while recreating on Newfound Lake.” *Id.* The Petition concludes that “WMLF members will therefore suffer the direct negative aesthetic consequences of the Project and that WMLF members will also be harmed by the Project to the extent it negatively affects property values within the viewshed.” *Id.*

WMLF 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, WMLF’s contention—that their members will have a clear and unobstructed view of the Project—is substantially the same argument that any individual living near the lake or visiting the area could make.¹ Therefore, WMLF’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

WMLF also argues that the Project may affect property values. Again, WMLF has failed to establish how such harm might occur and which specific members might be subjected to such

¹ In fact, the Petitioner specifically states that its members will have a clear and unobstructed view of the project from various “public viewsheds.” *Petition to Intervene by Wild Meadows Legal Fund*, at 3.

harm. The lack of specificity here makes it impossible to ascertain if WMLF should be granted standing for this issue and if so, how its role should be limited and/or consolidated with other parties. WMLF has failed to demonstrate that it may be “directly affected by the decision, or in other words, [that WMLF] 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. Tourism and the Economic Development of the Region

WMLF states that the region’s tourism and economic development 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.

WMLF is made up of homeowner’s associations; WMLF has not alleged that its subscribers include tourist operations, businesses or business owners in the region. On its face, the WMLF has failed to allege the kind of concrete harm to specific members that is necessary to establish standing. *See e.g. 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 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).²

Further, while WMLF argues that they have a right to intervene because the region’s tourism industry and economic development may be affected, WMLF 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*

² 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.

Richards, 134 N.H. at 156. WMLF “ha[s] alleged nothing distinguishing their right and interest from that of other citizens and taxpayers.” *Bennett*, 72 N.H. at 64.

4. “Other Associated Impacts”

Insomuch as WMLF claims that the project may have “other associated impacts to its members due to the proximity of the Project,” such blanket assumptions that WMLF 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, WMLF has failed to put forth a clear and concise statement justifying intervention. *See* RSA 542-A:32, I.

IV. Alternatively, if the Committee Grants WMLF’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 WMLM motion is granted, the SEC should limit WMLF’s role in the proceedings only to specific issues where it can demonstrate that: WMLF 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 WMLF’s involvement is necessary; and that WMLF’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 WMLF to intervene, Atlantic Wind respectfully requests that WMLF's participation in these proceedings be limited only to those issues in which WMLF 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 WMLF 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