

**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 a
Renewable Energy Facility Proposed to be Located in Danbury, Merrimack County and
Alexandria, Grafton County, New Hampshire**

March 3, 2014

**ORDER DENYING MOTION FOR REHEARING FILED BY THE
SOCIETY FOR THE PROTECTION OF NEW
HAMPSHIRE FORESTS**

I. Background

On December 12, 2013, Atlantic Wind, LLC, a subsidiary of Iberdrola Renewables, LLC (Applicant) filed an Application seeking a Certificate of Site and Facility for the siting, construction and operation of a 75.9 megawatt wind energy facility (Application) to be located in the Towns of Alexandria and Danbury, New Hampshire. Upon receipt of the Application, the Chairman of the Site Evaluation Committee designated the Vice Chairman to conduct a preliminary review in order to ascertain whether the Application contained sufficient information to carry out the purposes of RSA 162-H. *See*, RSA 162-H:6-A, II. In addition, counsel to the Committee forwarded correspondence to relevant state agencies asking that the state agencies conduct a preliminary review and advise as to whether or not the Application contained sufficient information to satisfy the Application requirements of each state agency having jurisdiction. *See*, RSA 162-H:6-A, I. Prior to a completeness determination the Society for the Protection of New Hampshire Forests (SPNHF) filed a motion to suspend deliberations and time frame pursuant to RSA 162-H:6-a, IX. The motion filed by SPNHF requested the “suspension of further proceedings with respect to the New Hampshire Site Evaluation Committee’s consideration of the Application . . .” In its motion, SPNHF argued strenuously that further

consideration of the Application should be suspended pending the establishment of substantive siting regulations.¹

The Applicant filed a timely objection to the motion to suspend. On January 13, 2014, the presiding officer issued an order determining the Application to be incomplete. In addition, as part of the order, the presiding officer denied SPNHF's motion to suspend. In denying SPNHF's motion to suspend, the presiding officer considered the substantive arguments made by SPNHF. Those arguments were rejected. The presiding officer determined that a suspension of the proceedings would not be in the public interest. The presiding officer also noted that a delay in hearing the pending application was not required by RSA 162-H or the legislative history of Senate Bill 99. The legislative history of SB 99 reveals that amendments seeking to impose a moratorium on Applications filed with the Committee pending the adoption of administrative rules were defeated, both in Committee and on the floor of the New Hampshire Senate. Therefore, the presiding officer denied the relief sought by SPNHF.

Notably, in the motion to suspend, SPNHF did not seek alternative relief. SPNHF did not request that the motion to suspend be held in abeyance pending the acceptance of the Application and appointment of a subcommittee.

SPNHF now files a motion for rehearing alleging that the presiding officer did not have the authority to deny the motion and further asserting that instead of denying the motion the motion should have been held in abeyance pending the appointment of a subcommittee. SPNHF now seeks relief in its motion for rehearing that it did not request in its original motion.

¹ Pursuant to RSA 162-H: 10, VII, the Site Evaluation Committee is required to promulgate substantive siting regulations by January 1, 2015. This requirement was born of legislation commonly referred to as Senate Bill 99.

II. Analysis

The Applicant has objected to the motion and noted that “SPNHF knowingly filed its motion to suspend seeking relief from the SEC in advance of the Atlantic Wind Application’s acceptance. . . . SPNHF cannot have it both ways by first requesting relief from the SEC and then complaining that the Committee lacked authority to deny the relief requested.” The Applicant’s analysis is correct.

RSA 162-H: 6-A, III states, “the Chairperson of the Committee or designee shall decide whether or not to accept the Application within 30 days of filing. Once an Application has been accepted, the Chairperson shall designate a subcommittee as provided in RSA 162-H: 4, V.” RSA 162-H: 4, V states, “once an energy facility has been accepted, the Chairperson may designate a subcommittee of no fewer than 7 members that shall consider such Application.”

The statutory scheme is simple. A subcommittee may not be appointed until such time as an Application has been accepted. Therefore, SPNHF’s motion to suspend was untimely filed. It was filed before the appointment of a subcommittee. Because no subcommittee existed, responsibility to rule on pending motions was left to the Chairperson or his designee. The presiding officer addressed the substantive issues raised and denied the motion. The substantive reasons provided by the presiding officer were wholly reasonable and clearly lawful. Nothing contained within the motion for rehearing credibly suggests that the substance of the order was anything but lawful and reasonable.

While one may argue that the motion to suspend should not have been ruled on at all it is clear that the matter became moot when the Application was determined to be incomplete. To date the Application has not been completed and it will be incumbent upon the Applicant to file a new application if it so desires. At that point the new application will be reviewed for

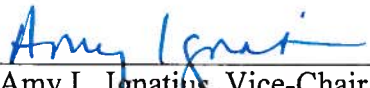
completeness. If accepted by the Chair or his designee a subcommittee would be designated at that time. Therefore the motion for rehearing is determined to be moot and therefore it is denied. Nothing herein should be construed to prohibit a timely filing of a new motion to suspend if a new application should be filed.

I note that the Committee has received several letters from the public requesting that the docket in this matter be closed. The docket is essentially the Committee's file for this matter. The Committee does not engage in the practice of "closing" its dockets. If the Applicant chooses to file a new application it will be opened under a new docket number to avoid confusion.

III. Order

The Motion for rehearing filed by the Society for the Protection of New Hampshire Forests is determined to be moot and is therefore denied.

So ordered,



Amy L. Ignatius, Vice-Chair
Presiding Officer