



McLane, Graf,
Raulerson & Middleton
Professional Association

11 South Main Street, Suite 500 | Concord, NH 03301
Tel: 603.226.0400 | www.mclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH
WOBURN, MA

PATRICK H. TAYLOR
Direct Dial: 603-628-1266
Email: patrick.taylor@mclane.com
Admitted in NH and MA

January 29, 2015

Site Evaluation Committee
N.H. Department of Environmental Services
29 Hazen Drive
Concord, NH 03302-0095

**Re: Docket No. 2014-05: Antrim Wind Energy, LLC Petition for Jurisdiction
Over a Renewable Energy Facility**

Dear Sir or Madam:

In connection with the above-referenced docket I enclose an original and eighteen (18) copies of the following:

- Antrim Wind Energy (AWE)'s Limited Objection to the Petitions to Intervene By Abutting and Non-Abutting Property Owners;
- AWE's Objection to the Petitions to Intervene by The Windaction Group and Patrick J. Leary; and
- AWE's Reply to Counsel for the Public's Objection to AWE's Petition for Jurisdiction.

If you have any questions regarding these materials, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. H. Taylor".

Patrick H. Taylor

Enclosures

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

PETITION FOR JURISDICTION OVER A RENEWABLE FACILITY
BY ANTRIM WIND ENERGY LLC

SEC DOCKET NO. 2014-05

**APPLICANT'S LIMITED OBJECTION TO PETITIONS TO INTERVENE BY
ABUTTING AND NON-ABUTTING PROPERTY OWNERS**

NOW COMES the Applicant, Antrim Wind Energy, LLC ("AWE"), and respectfully submits this Limited Objection to the Petitions to Intervene by abutting property owners Brenda, Mark and Nathan Schaeffer, Clark Craig, and Janice Duly Longgood ("abutting property owners") and non-abutting property owners Charles Levesque, Fred Ward, Annie Law, Robert Cleland, Elsa Velcker, and Richard and Lorraine Carey Block ("non-abutting property owners") and requests that, to the extent the New Hampshire Site Evaluation Committee ("SEC") grants these Petitions to Intervene, the SEC limit the intervenors' participation in the proceedings to issues arising out of their property interests and consolidate the intervenors into representative groups.

I. Introduction

AWE submitted its petition requesting that the SEC assert jurisdiction or maintain previously asserted jurisdiction over the Antrim Wind Project on November 26, 2014. The SEC subsequently opened Docket 2014-05, and on December 30, 2014, the SEC issued an Order and Notice of Public Hearing. AWE has not yet submitted a revised Application for a Certificate of Site and Facility for the Antrim Wind Project, and Docket 2014-05 is limited to adjudicating the issue of whether the SEC should assert or maintain jurisdiction over the Project.

The abutting landowners each assert that they own property abutting the proposed Antrim Wind Project ("Project") site. The non-abutting property owners each assert that they own property in close proximity (1-3 miles) or "in the view shed" of the proposed Project. Though none of the abutting or non-abutting property owners have articulated any specific interest that may be affected by the SEC's decision on AWE's petition for jurisdiction, AWE does not object to their participation as intervenors. However, the participation of these intervenors should be limited to issues arising directly out of the property interests articulated in their petitions, and they should be consolidated into two separate groups for the purposes of participating.

II. Standard for Intervention

Pursuant to RSA 542-A:32, I and Site 202.11, the SEC shall grant a petition to intervene in a proceeding if: (1) the petition is timely and submitted in writing; (2) the petition states facts demonstrating that the petitioner's 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) 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). The SEC may also impose conditions limiting an intervenor's participation in a proceeding to designated issues in which the intervenor has a particular interest. RSA 541-A:32, III; N.H. Code Admin R., Site 202.11(d).

In this case, none of the abutting or non-abutting property owners have articulated any specific rights, duties, privileges, immunities or other substantial interests that may be affected by this jurisdictional proceeding, nor do they allege that they qualify as an intervenors as a matter of law. Rather, they articulate certain interests that may arguably be affected in a

subsequent and separate proceeding in which the SEC will evaluate AWE's application for a certificate of site and facility, should the SEC grant AWE's jurisdictional petition in this docket. Nevertheless, AWE does not object to the petitions to intervene of the abutting and non-abutting property owners. However, to the extent that the SEC permits their intervention, it should impose conditions limiting their participation to their interests as owners of property abutting or nearby the Project.

III. To the Extent That the SEC Grants the Abutting Property Owners' Petitions to Intervene, Such Participation Should Be Limited

a. Participation Should be Limited to Issues Arising Directly Out of the Intervenors' Property Interests

The abutting property owners each claim to own property directly abutting the proposed Project site. The SEC has previously found ownership of abutting property to be a type of direct interest that qualifies a person to be an intervenor under RSA 541-A:32 and Site 202.11. Docket 2011-02, Order on Motions to Intervene at 4 (May 6, 2011). Though the abutting property owners have not articulated how the outcome of this jurisdictional docket may affect that interest, AWE recognizes that the abutting property owners are concerned about safeguarding their respective property interests and may wish to participate in proceedings related to the Project. As such, AWE does not object to intervention of the abutting property owners to the extent that it is limited to issues directly arising out of the property interest articulated in their petitions. However, their participation as intervenors in this Docket, if allowed by the SEC, should not broadly encompass issues that may be addressed in this Docket but do not pertain to or arise out of the abutters' property interests. RSA 541-A:32, III(a); N.H. Code Admin R., Site 202.11(d).

b. Participation of the Abutting Property Owners Should Be Consolidated

It appears that, in addition to sharing a common interest – ownership of property abutting the proposed Project site – the abutting property owners share a common opinion of the Project. Specifically, Mr. Craig believes that the project will have a negative effect upon him and his land, and Ms. Longgood is concerned that the Project will impact the rural quality of life that she enjoys. Though the Schaefer family does not state a specific concern regarding the Project, they do state that they will have close physical and visual contact with the turbines, and they previously expressed “grave reservations” about the effect of the Project on their health and the quality of regional wildlife habitat. Docket 2011-01, Motion to Intervene *Pro Se* of Mark J. and Brenda Schaefer. Because the abutting property owners share the same direct interest in the proposed Project site, and because they all have expressed similar concerns regarding the effect of the Project upon themselves or their respective properties, the SEC can and should combine these intervenors into a group with a designated spokesperson. See Docket 2011-02, Order on Motions to Intervene at 4-5 (May 6, 2011) (combining the Schaefer family and Ms. Longgood, as well as one other abutting property owner, into a single representative group).

IV. To the Extent That the SEC Grants the Non-Abutting Property Owners’ Petitions to Intervene, Such Participation Should Be Limited

a. Participation Should be Limited to Issues Arising Directly Out of the Intervenors’ Property Interests

The non-abutting property owners each claim to own property in close proximity to or within the “view shed” of the proposed Project site. Though the SEC has previously found that merely living in Antrim does not create a sufficient interest to justify participation as an intervenor, it has permitted intervention by such parties when they live “sufficiently close” to justify such intervention. Docket 2011-02, Order on Motions to Intervene at 5 (May 6, 2011). In

Docket 2011-02, the SEC granted the intervention petitions of Ms. Velcker, Mr. Cleland, Ms. Law, and Richard and Lorraine Block on the grounds that they lived sufficiently close to the proposed Project site and therefore had an interest in the outcome of the proceeding. Mr. Levesque, who also alleges that he lives within 2 miles of the Project, participated in Docket 2011-02 as a member of the Antrim Planning Board. Dr. Ward alleges that he lives within 2-3 miles of the proposed Project site and will have a view of the turbines.

Though the non-abutting property owners have not articulated how the outcome of this jurisdictional docket may affect their property interests, AWE recognizes that non-abutting were permitted to intervene in Docket 2011-02, and that they are concerned about safeguarding their respective property interests and may wish to participate in proceedings related to the Project. As such, AWE does not object to intervention of the non-abutting property owners to the extent that such participation is limited to issues directly arising out of the property interests articulated in their petitions.

However, their participation as intervenors in this Docket, if allowed by the SEC, should not broadly encompass issues that may be addressed in this Docket but do not pertain to or arise out of the abutters' property interests. Several of the non-abutting property owners assert interests that do not directly arise out their properties, and are more public interests that will adequately be addressed by participating state agencies or Counsel for the Public. Dr. Ward, for example, argues that he has noted "major errors" in the stated environmental impacts of the proposed development, and challenges the validity of data collected from AWE's meteorological tower at the proposed Project site. These issues are not relevant to the jurisdictional question before the SEC, nor is Dr. Ward the proper party to raise them. The SEC process already provides for a "full and timely consideration of environmental consequences" of proposed

energy projects, RSA 162-:1, and the Commissioner of the New Hampshire Department of Environmental Services acts as vice-chairperson of the SEC. RSA 162-H:3, I(b). State agencies such as the New Hampshire Department of Environmental Services will assess the environmental impacts of the Project when an Application is filed. Dr. Ward's asserted interest in this regard is no different from that of the public at large, and Counsel for the Public may be appointed to represent the public's interest in such proceedings. RSA 162-H:9, I; *Order on Pending Motions*, Docket 2009-02 at 6 (March 10, 2009). There is no reason for private parties to assume roles otherwise entrusted to public agencies or public counsel, and indeed the orderly and prompt conduct of SEC proceedings would become inefficient and impaired if that were the case. RSA 541-A:32, I; N.H. Code Admin R., Site 202.11(b). For these reasons, intervention of the abutting and non-abutting property owners should be limited to issues arising directly out of their property interests.

b. Participation of the Abutting Property Owners Should Be Consolidated

It appears that, in addition to sharing a common interest – ownership of property located in close proximity to the proposed Project site – the non-abutting property owners share a common opinion of the Project. All of the non-abutting property owners express a concern that the Project will have a negative effect upon their respective properties, their enjoyment of their properties, or their health.¹ Because the non-abutting property owners share the same asserted interest in the proposed Project site, and because they all have expressed concerns regarding the effect of the Project upon themselves or their land, the SEC can and should combine these intervenors into a group with a designated spokesperson. Docket 2011-02, Order on Motions to

¹ Though Ms. Voelcker does not expressly state her opposition to or concerns about the proposed Project in her petition to intervene, such concerns were stated as the basis for her intervention in Docket 2011-02. See Docket 2011-02, Motion to Intervene *Pro Se* of Elsa Voelcker (April 15, 2011).

Intervene at 5 (May 6, 2011)(combining Ms. Voelcker, Ms. Law, Mr. Cleland, and Mr. and Mrs. Block, as well as several other non-abutting property owners, into a single representative group).

V. Conclusion

The abutting and non-abutting property owners have asserted property interests that may be affected by the proposed Project, and that served as a basis for intervention in Docket 2011-02. Though it is not clear how the outcome of this jurisdictional docket will affect those interests, AWE does not oppose the intervention of these petitioners in this Docket provided that their participation be limited to issues directly arising out their property interests. The scope of their intervention should not be unlimited.

Respectfully submitted,

Antrim Wind Energy, LLC

By its attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION



Dated: January 29, 2015

By: _____
Barry Needleman, Esq. Bar No. 9446
Patrick H. Taylor, Esq. Bar No. 17171
11 So. Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
patrick.taylor@mclane.com

Certificate of Service

I hereby certify that on this 29th day of January, 2015, I served the foregoing Objection by electronic mail to the service list in this docket.



Patrick H. Taylor, Esq.