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March 18, 2016

VIA ELECTRONIC MAIL & HAND-DELIVERY

New Hampshire Site Evaluation Committee
Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: NH Site Evaluation Committee Docket No. 2015-02:
Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility for
Construction of a Wind Project in Antrim New Hampshire**

Dear Ms. Monroe

Please find enclosed for filing in the above-captioned matter, an original and one copy of Applicant's Objection to Wind Action Group, Lorraine Carey Block, and Richard Block's Motion Requiring Portions of the Antrim Wind LLC Application be Brought into Compliance with NH Site Evaluation Committee Rules.

We have provided members of the distribution list with electronic copies of this Objection, pending addition of the document to the Committee's website.

Please contact me directly should you have any questions.

Sincerely,


Barry Needleman

BN:rs3

Enclosure

cc: Distribution List

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-02

**APPLICATION OF ANTRIM WIND ENERGY, LLC
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANT'S OBJECTION TO MOTION REQUIRING PORTIONS OF THE
ANTRIM WIND, LLC APPLICATION BE BROUGHT INTO COMPLIANCE**

NOW COMES Antrim Wind Energy, LLC ("AWE" or the "Applicant") by and through its attorneys, McLane Middleton, Professional Association, and respectfully submits this Objection to Wind Action Group and Lorraine Carey Block and Richard Block's (collectively referred to as the "Intervenors") Motion Requiring Portions of the Application be Brought into Compliance (the "Motion").

I. Introduction

1. On October 2, 2015, the Applicant filed an Application with the New Hampshire Site Evaluation Committee ("SEC" or the "Committee") for a Certificate of Site and Facility to construct and operate a 28.8 MW electric generation facility consisting of nine Siemens SWT-3.2-113 direct drive wind turbines in Antrim, New Hampshire (the "Project"). The Committee accepted the Application as administratively complete on December 1, 2015.

2. On December 16, 2015, the Committee readopted its administrative rules with amendments. The Applicant received a letter from the Committee dated December 28, 2015, pursuant to RSA 162-H:10, VII, requesting that the Applicant review the newly adopted rules and notify the Committee whether additional information was required for the Application to comply with the new rules.

3. The Applicant notified the Committee that supplemental information was required and timely provided the Committee with the additional information on February 19, 2016.

4. On March 11, 2016, the Intervenors filed their Motion, arguing that certain portions of the Antrim Wind Energy, LLC Application are not in compliance with the Committee's recently amended rules.

5. The Intervenors misunderstand the purpose of the additional information required in this unusual circumstance in which an application is filed under existing old rules, deemed complete, but has not be adjudicated before the time of readoption of the rules. The issues the Intervenors raise have no bearing on Application Completeness. If anything, the arguments relate to the strength of the Applicant's case including whether it has met its burden of proof. As explained below, the Application has already been determined to be complete and that determination cannot be reconsidered or revoked.

II. Completeness Determination

6. The Intervenors have requested, based on their review of the supplemental information submitted by the Applicant, that the Committee reevaluate its December 1, 2015 decision deeming the Application administratively complete.

7. The Committee has already considered this issue in another docket and rejected the argument the Intervenors raise here. Specifically, the Committee found that the initial Application, upon which a completeness determination is made, and supplemental documentation provided pursuant to RSA 162-H:10 are separate: "the Statute does not contain language either indicating or implying that the term 'application,' as codified by the statute, means supplemental documentation that might be provided by the Applicant." *Order on Pending Motions to Suspend Proceedings or Postpone Public Hearings*, Docket No. 2015-06, p.

8-9 (March 1, 2016). As noted by the Committee, “[t]he language of the statute is unambiguous- the Subcommittee is required to continue to process the ‘application’ even if the Applicant must submit supplemental documentation.” *Id.* at 9; *See also* RSA 162-H:10, VII. The Committee tied this analysis together by concluding that:

Interpreting the term "application" as supplemental documentation provided by the Applicant is contrary to the plain language of the statute. In addition, such an interpretation would require the Subcommittee to ignore a clear statutory mandate to continue to process the Application pending submittal of supplemental information.

Id.

8. The standard of review applicable to the Committee’s review of the additional information submitted by the Applicant, is analogous to the standard applied during the Committee’s initial review of an application. During such review, the Committee must consider whether the Applicant was responsive to the requirements in the rules on the face of its submittal. The Committee does not review the merits of the information submitted. Similarly, the Committee’s review of the Applicant’s additional information should be limited to a determination as to whether the Applicant was responsive to the readopted rules in order to move forward with the case. The merits of the information submitted, which is the real crux of the Intervenor’s Motion, will be addressed later in the proceeding.

9. Additionally, as addressed in another docket, “[i]t is not the practice of the Committee to allow litigation over its review of an application for acceptance purposes.” *Order Accepting Application*, Docket No. 2015-06, p. 12 (December 18, 2015). This is purely an administrative review. The same practice should apply to the Committee’s review of the additional information filed by the Applicant. Parties to the proceeding are not involved in the Committee’s completeness review and similarly should not participate in this unusual situation requiring the Committee to complete an analogous review of the additional information submitted.

III. Burden of Proof

10. Pursuant to the Administrative Rules, “an applicant for a certificate of site and facility shall bear the burden of proving facts sufficient for the committee or subcommittee, as applicable, to make the findings required by RSA 162-H:16.” NH Site 202.19(b).

11. During the proceeding, the Applicant must “bear the burden of proving the proposition by a preponderance of the evidence.” NH Site 202.19(a). The Committee will consider the evidence and testimony presented throughout the proceeding in order to determine whether the Applicant has provided sufficient information to meet its burden.

12. The Intervenors now seek to delay this proceeding by making two arguments: (1) the Intervenors claim the Applicants made errors which must be corrected now, and (2) the Intervenors prematurely raise burden of proof issues based on their inaccurate description of the information provided by the Applicant and based on their own interpretation of the Committee’s rules.

13. The Intervenors have identified alleged errors they believe the Applicant made in its supplemental filing. In several instances, the Intervenors have incorrectly described the information provided by the Applicant.¹ To the extent such errors are present, the Applicant will follow the common practice in SEC proceedings and correct them at the appropriate time. Whether or not such errors are present has no bearing on whether the Committee should proceed with the timely processing of the Application.

14. The Intervenors also offer their own interpretation of Committee rules and present what are plainly burden of proof arguments that are more appropriate to raise during discovery and at the final hearing. For example, the Intervenors assert that LandWorks applied some type

¹ For example, the Intervenors claim that a separate model for predicted sound emissions from the substation was omitted from the 2016 report. This is incorrect. Discussion of the substation is included in Section 7.2 of the original Noise Report filed as well as the updated 2016 Noise Report. In addition, Table 7-3 provides information regarding the Sound Power Levels associated with the Substation Transformer.

of “haze effect” or “haze or fog effect” in “nearly all photosimulations.” *The Motion*, Docket 2015-02, p. 5-6 (March 11, 2016). That assertion is purely argumentative, premature and, most notably, incorrect. The Applicant’s visual expert, David Raphael of LandWorks has stated that LandWorks does not use or apply a haze or fog effect to any of its visual simulations. *See Transcript Jurisdictional Hearing Day 1 Morning Session*, Docket No. 2014-05. p. 45 (July 6, 2015)(“We do not alter, change any of these photographs to be deceitful.”). Notwithstanding these points, it is abundantly clear that the parties have the right to and will contest these issues during the proceeding in conformance with the schedule the Committee will issue. These are in no way threshold issues that the Applicant must address now to the satisfaction of the Intervenors before the timely processing of the Application may proceed.

15. Finally, the Intervenors allege that the Applicant failed to provide necessary information relating to project decommissioning. Specifically, they assert that the decommissioning plan is deficient because it does not provide for removal of structures to a depth of four-feet, and the Applicant failed to seek a waiver. *The Motion* at 3. The Applicant believes it has provided sufficient information to comply with the new rules. The Applicant considered seeking a waiver of the four-foot requirement but chose not to do so because it believes that in most, if not all cases, it will be able to comply with the four-foot requirement. However, it is possible that there may be some circumstances where removal to four-feet would be potentially more harmful than removal to a lower depth. The Applicant expects these issues will be addressed and resolved during the course of the proceeding.

Respectfully submitted,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION


Dated: March 18, 2016

By:  _____

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Certificate of Service

I hereby certify that on the 18th of March 2016, an original and one copy of the foregoing Objection were hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the service list.

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Barry Needleman