



**Upton
& Hatfield**^{LLP}
ATTORNEYS AT LAW

Please respond to the Portsmouth office

May 20, 2016

Attorneys At Law

Russell F. Hilliard
James F. Raymond
Barton L. Mayer
Charles W. Grau
Heather M. Burns
Lauren Simon Irwin
Justin C. Richardson
Michael S. McGrath*
Marilyn Billings McNamara
Peter W. Leberman
Jeanne S. Saffan**
Steven J. Venezia*
Lisa M. Hall, RN
Kimberly A.W. Peaslee, PhD***
Sandra H. Kenney**
Michael P. Courtney*

Of Counsel

Douglas S. Hatfield
Gary B. Richardson
John F. Teague
Bridget C. Ferns

Concord Office

10 Centre Street
PO Box 1090
Concord, NH
03302-1090
603-224-7791
1-800-640-7790
Fax 603-224-0320

Hillsborough Office

8 School Street
PO Box 13
Hillsborough, NH
03244-0013
603-464-5578
1-800-672-1326
Fax 603-464-3269

Portsmouth Office

159 Middle Street
Portsmouth, NH 03801
603-436-7046
1-877-436-6206
Fax 603-369-4645

www.uptonhatfield.com
law@uptonhatfield.com

Via Electronic and U.S. Mail

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

Re: Application of Antrim Wind Energy; Docket # 2015-02

Dear Ms. Monroe:

Enclosed please find an *Objection to Motion to Expand Procedural Schedule*.

A complete copy of the foregoing has been provided by electronic mail to all persons on the Committee's official service list in this proceeding.

Thank you and if you have any questions, please feel free to contact me.

Very truly yours,

Justin C. Richardson
jrichardson@uptonhatfield.com

JCR/sem

Enclosure(s)

cc: Service List #2015-02

*Also admitted in MA

**Also admitted in MA & NY

***Also admitted in DC
MA, ME, USPTO

BEFORE THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Application of Antrim Wind, LLC

NHSEC No. 2015-02

OBJECTION TO MOTION TO EXPAND PROCEDURAL SCHEDULE

NOW COMES the Town of Antrim, by and through Upton & Hatfield, LLP, and objects to Wind Action's motion to expand procedural schedule as follows:

1. Testimony is due on Monday, May 23, 2016. On Thursday, May 19, 2016, Wind Action requested that the Committee's Presiding Officer "expand the procedural schedule...by at least one month" in order to delay filing its testimony.

2. Wind Action asserts that a continuance is required because of: (a) Confidential Documents ("On April 15, 2016, AWE filed a motion seeking protective treatment of certain documents."); (b) Uncertain Rules ("Absent the Committee's response to ["Wind Action's"] March 10 motion, the Parties must assume that the [Committee's] rules, as adopted, will not be enforced despite their clear meaning."); and (c) The Need for a Second 16-Location Site Visit ("The Parties, and others, had expected a second site visit to occur in the months following February 25, 2016 but the Committee has provided no feedback.")

3. The Town objects and respectfully disagrees. A last-minute continuance will disrupt the established procedural schedule. Under Rule 202.17 a continuance is granted only if the Presiding Officer determines that "the proposed continuance will promote the orderly and efficient conduct of the proceeding and assist in resolving the case fairly." In this case, for the reasons stated below, a continuance would have the opposite effect, and is ultimately unnecessary.

4. **Confidential Documents.** Wind Action asserts that it has been unable to review certain confidential documents that it acknowledges to be non-public commercial and financial information.

5. Wind Action has not explained why it has waited until two business days before the deadline to file testimony to ask for a continuance; nor demonstrated that it is likely to obtain the confidential records it seeks. New Hampshire law is clear that Antrim Wind is entitled to confidential treatment for “confidential, commercial, or financial information”. RSA 91-A:5, IV. It is not reasonable to delay this entire proceeding when the law is clear that commercial and financial information is treated as confidential, as the law clearly allows.

6. Even if Antrim Wind’s request for confidential treatment were denied, Wind Action’s remedy would be to request a limited opportunity to respond to new information made publicly available. A delay in the established procedural schedule would be disruptive. It is also speculative because the law clearly allows financial information to be treated as confidential. RSA 91-A:5, IV. It seems likely that Antrim Wind’s confidential financial records will remain confidential.

7. **Applicability of the Committee’s Rules.** Whether or not an application is subject to and meets the requirements of particular rules is not cause for a continuance. To the extent that Wind Action believes that a particular rule applies to the project, Wind Action is free to provide testimony in support of its position. Indeed, that is the purpose for filing testimony. It is not grounds for significant procedural delays.

8. **Second Site Visit.** Wind Action argues that the Committee should have held a second site visit to the following 16 locations prior to the submission of testimony: (1) Bald Mountain; (2) Goodhue Hill; (3) Pitcher Mountain; (4) Meadow Marsh; (5) Robb Reservoir; (6)

Farmstead Road; (11) Bacon Ledge; (12) Hedgehog Mountain; (13) High Five; (14) Berwick residence Reed Carr Road; (15) Back Road to Gregg Lake (Craig Road?); and (16) Salmon Brook Road (Longgood/Schaefer residences).

9. The Committee has significant discretion as to whether and when to schedule a second site visit, or a series of site visits as might be required for all 16 locations suggested by Wind Action. However, a site visit by the Committee is not required in order to submit testimony. Wind Action is free to offer testimony as to the view or impacts at any particular location. There is no need for the Committee to travel to 16 different locations simply to observe them before testimony is submitted. In fact, testimony may help inform whether a site visit should be held.

10. **Conclusion.** Testimony is due on Monday, May 23, 2016. The Town of Antrim has prepared to meet this deadline, as required. Wind Action's last minute request to continue all testimony "by at least one-month" immediately prior to the deadline, will not "promote the orderly and efficient conduct of the proceeding" nor "assist in resolving the case fairly" as required by Rule 202.17. As a result, the Town of Antrim respectfully requests that the Committee deny Wind Action's Motion.

Respectfully submitted,

Town of Antrim

By Its Counsel,

UPTON & HATFIELD, LLP

Date: May 20, 2016

By:



Justin C. Richardson

NHBA #12148

159 Middle Street

Portsmouth, New Hampshire 03801

(603) 436-7046

jrichardson@uptonhatfield.com

CERTIFICATION

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the Service List in this proceeding by electronic mail.



Justin C. Richardson