

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Concerning an Application for a Certificate of Site and Facility
Antrim Wind Energy LLC
Docket No. 2015-02

**INTERVENOR'S OBJECTION TO APPLICANT'S
MOTION TO STRIKE CERTAIN SUPPLEMENTAL PRE-FILED TESTIMONY**

NOW COMES Richard Block, Intervenor and spokesperson for the Non-Abutting Intervenors' Group ("Intervenor") who respectfully submits this objection to the Antrim Wind Energy, LLC ("Applicant") Motion to Strike Certain Supplemental Pre-Filed Testimony filed with the Site Evaluation Committee ("SEC") on August 26, 2016.

In this Motion, the Applicant argues that the supplemental testimony filed by the August 18, 2016 deadline by the Intervenor, along with the testimonies of Annie Law and Robert Cleland, Barbara Berwick, and Geoffrey Jones, does not reference any information that was unavailable to them at the time their initial pre-filed testimonies were filed on or about May 23, 2016. The Applicant further argues that this supplemental testimony improperly seeks to introduce new material that could have been included in initial testimony and should be stricken from the proceeding as a result.

Argument

The SEC held a technical session on July 12 and 13, 2016 where the Applicant and others questioned the Intervenors and their witnesses as well as that of the Council for the Public. During this technical session, Counsel for the SEC discussed the deadline for filing supplemental pre-filed testimony and the appropriate purposes

for such testimony. At that time, Counsel for the SEC reviewed the long-standing practice of the SEC, stating that, while supplemental testimony is not intended to allow parties to submit additional material or make arguments that they could have presented at the time of initial pre-filed testimony, it was permissible to be used to address topics or support issues which were raised during those technical sessions after the filing of initial testimonies.

One of the purposes of the Intervenor's supplemental pre-filed testimony is to present material supporting his claim "that the revised turbine proposal... is virtually unchanged from the proposal denied by the SEC in Docket #2012-01." During the technical session of July 12 and 13, 2016, this topic was raised during questioning of the Counsel for the Public's witness, Kellie Connelly of Terraink, LLC; by New Hampshire Audubon intervenors; and by the Intervenor during questioning by the Applicant and other intervenors. For this reason, Exhibits RB(Supp)-1 and RB(Supp)-2 were included in the supplemental pre-filed testimony.

An additional purpose of the Intervenor's supplemental pre-filed testimony is to demonstrate "that the Applicant has provided false information to the media claiming broad support among the residents of Antrim, and that their claim is totally unfounded." This issue was repeatedly raised during the July 12 and 13 technical session, particularly during questioning of intervenor Charles Levesque and by the attorney for the Antrim Board of Selectmen. The included Exhibits RB(Supp)-3, RB(Supp)-4, and RB(Supp)-5 in the Intervenor's supplemental pre-filed testimony are for the purpose of further illustrating the disconnect of statements made by the Applicant and the Board of Selectmen and their representatives, and the facts of the votes and observations of outside parties such as the media.

The final purpose of the Intervenor's supplemental pre-filed testimony is to "bring forward from SEC Docket #2012-01 a series of photographs included with testimony submitted by Susan Morse, wildlife tracking expert hired by the non-abutting intervenors, demonstrating some significant signs of wildlife activity on the

Tuttle Hill/Willard Ridge, along with photographs of the extensive boulder formations which would be demolished with the construction of AWE's access road." This material is in direct support of statements made during the July 12 and 13 technical session by Carol Foss of New Hampshire Audubon. In that discussion she referred to the extensive boulder formations mentioned above in the context of their crucial importance as habitat for various wildlife such as bear, bobcat, and fragile plant life, and to the concern that the utter destruction of this habitat in building the turbine facility and road would be irreversible damage. The inclusion of Exhibits RB(Supp)-6 and RB(Supp)-7 in the Intervenor's supplemental pre-filed testimony are for the purpose of illustrating the extent of the wildlife evidence and the superior rock formation habitat along the ridge. Although these photographs were taken July 10, 2012, they exist as the most recent and relevant documentation for the issues raised during the technical session.

Conclusion

Of concern is the fact that the Applicant, as sole justification for their Motion to Strike Certain Supplemental Pre-Filed Testimony, states that "the content... does not reference any information that was unavailable to them at the time their initial pre-filed testimony was filed." They continue, "if parties are permitted to contravene SEC practice and use supplemental testimony to introduce new arguments and documents that plainly could have been included in their initial testimony, it creates substantial risk of unfairness and interference with the orderly conduct of the proceedings." What would be most unfair would be the imposition of different standards to intervenors supporting an application to those intervenors opposing one. In their Motion to Strike, the Applicant has failed to note that the Supplemental Pre-Filed Testimony of the Town of Antrim Board of Selectmen contains documents from March, 2011 and earlier. The same standards need to apply to proponents as to opponents.

The Intervenor does note that the Supplemental Pre-Filed Testimony of the Town of Antrim Board of Selectmen references issues raised during the July 12 and 13 technical session. Since the Intervenor now realizes that it was not obvious that all his materials submitted were in response to various discussions and topics raised during the July 12 and 13 technical session, he concedes that he should have been clearer in his justification for inclusion of the materials in his supplemental pre-filed testimony. Since all materials submitted were done so for the direct purpose of responding to and supporting issues raised in the July technical session, the Intervenor seeks acceptance of his Supplementary Pre-Filed Testimony as presented to the SEC.

It should also be noted that the Applicant submitted this Motion without seeking prior concurrence from any of the parties. The Intervenor is aware that the SEC rules state:

Site 202.14 Motions and Objections.

...

(d) The moving party shall make a good faith effort to obtain concurrence with the relief sought from other parties, if the relief sought involves a postponement or extension of time.

While technically this Motion, since it does not involve a postponement or extension of time request, may not violate this rule, in every motion submitted by the Applicant in this docket prior to this one, concurrence was sought and referenced in those motions. The Intervenor questions why the Applicant omitted that “good faith effort” this time.

WHEREFORE, the Intervenor respectfully requests that the Committee deny the Applicant’s Motion to Strike Certain Supplemental Pre-Filed Testimony and accepts for consideration all materials included in the Intervenor’s supplemental pre-filed testimony.

Respectfully submitted,

Dated: September 2, 2016



Richard Block
Spokesperson for Non-Abutting Resident Intervenors

Certificate of Service

I, Richard Block, certify that on September 2, 2016, I served a copy of the foregoing on the Parties and Intervenors, as identified on the official service list, by electronic mail.



Richard Block