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April 5, 2017

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 – Objection to Meteorological Group’s
Motion for Rehearing**

Dear Ms. Monroe:

Please find enclosed for filing in the above-captioned matter, an original and one copy of Applicant’s Objection to the Meteorological Group’s Motion for Rehearing.

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.

Very truly yours,

Rebecca S. Walkley

RS3:

Enclosure

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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 ANTRIM WIND ENERGY, LLC OBJECTION TO
THE METEOROLOGICAL INTERVENOR'S MOTION FOR REHEARING**

Antrim Wind Energy, LLC (“AWE” or the “Applicant”) by and through its attorneys, McLane Middleton, Professional Association, respectfully submits this Objection to Meteorological Intervenor’s Motion for Rehearing (the “Motion”) and respectfully requests that the Committee deny the Motion because it fails to set forth good cause for a rehearing. Specifically, it does not raise any issue that was overlooked or mistakenly conceived by the Committee in its Decision and Order Granting Application for Certificate of Site and Facility nor does the Motion present any new evidence that was not before the Committee during the adjudicative hearing.

I. Background

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 on December 1, 2015.

The Committee presided over thirteen days of adjudicative hearings, during which time the Committee heard from 15 witnesses proffered by the Applicant as well as nine intervenor groups, and Counsel for the Public’s visual expert. In total the Subcommittee received 220

exhibits as well as receiving oral and written statements from interested members of the public. Upon completion of the adjudicative hearing, and after closing the record pursuant to Site 202.26, the Committee began deliberations.

The Committee deliberated on December 7, 9, and 12, 2016. During the deliberations, as the transcripts illustrate, the Committee reviewed the complete record including affirmative testimony provided by the Applicant as well as rebuttal or opposing testimony provided by all the intervenor groups, including the Meteorological Group. On March 17, 2017 the Committee issued its Decision and Order Granting Application for a Certificate of Site and Facility and Order and Certificate of Site and Facility with Conditions. The Committee's Decision, which addressed each and every concern raised by the Meteorological Intervenors during the Adjudicative hearing, was well-reasoned, and thoroughly supported by the comprehensive record.

On March 25, 2017, the Meteorological Intervenors filed a Motion for Rehearing, outlining the same arguments raised and addressed during the adjudicative hearing. The Motion fails to meet the standard required to grant a motion for rehearing and ignores the extensive record in this docket and thorough deliberations undertaken by the Committee.

II. The Motion Fails to Identify Any Issue That Was Overlooked or Mistakenly Conceived by the Committee and Does Not Introduce Any New Evidence That Was Not Before the Committee During the Adjudicative Hearings.

The purpose of a rehearing "is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon the record upon which that decision rested." *Dumais v. State of New Hampshire Pers. Comm.*, 118 N.H. 309, 311 (1978). RSA 541:3 provides that the commission "may grant such rehearing if in its opinion good reason therefor is stated in said motion." The Committee may grant rehearing or

reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. RSA 541:3, RSA 541:4; *Rural Telephone Companies*, N.H. PUC Order No. 25,291 (Nov. 21, 2011). A successful motion must establish “good reason” by showing that there are matters the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais*, 118. N.H. at 311; or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision.” *Hollis Telephone Inc.*, N.H. PUC Order No. 25,088 at 14 (April 2, 2010). A “good reason” for rehearing is not established where, as here, the movant merely restates prior arguments and asks for a different outcome. *Public Service Co. of N.H.*, N.H. PUC Order No. 25,676 at 3 (June 12, 2014). A motion for rehearing must be denied where no “good reason” or “good cause” had been demonstrated. *O’Loughlin v. State of New Hampshire Pers. Comm.*, 117 N.H. 999, 1004 (1977); *Order on Pending Motions*, Docket 2012-01, Application of Antrim Wind, at 3 (Sept. 10, 2013).

The Motion should be denied because it fails to identify how any finding made by the Committee is unlawful or unreasonable, it fails to identify any issue that was overlooked or mistakenly conceived by the Committee, and it fails to identify any new evidence that was not available during the adjudicative hearing. The Motion simply rehashes all of the arguments previously made by the Meteorological Intervenors in their pre-filed testimony and during the adjudicative hearing. The Committee correctly determined that the Applicants met their burden of proof pursuant to Site 202.19, and established by a preponderance of the evidence that it satisfied all of the requirements of RSA 162-H:16 to receive a Certificate of Site and Facility.

A. Noise

The Committee recently adopted specific rules relating to the assessment of noise for proposed wind facilities, ostensibly in part, to reduce litigation on this issue. The Applicants

submitted a comprehensive Sound Level Assessment Report that evaluated both existing sound levels and the predicted noise levels associated with this Project, consistent with the rules. *See Application*, App. Exh. 33, Appendix 13A; *see also Supplement to Application re: New Rules*, App. Exh. 34, Attachment 9. The Applicant also submitted extensive expert testimony from Robert O’Neal demonstrating that Epsilon complied with and followed all requirements and standards set out in the SEC rules.

Dr. Ward’s assertion that the Committee was “reluctant to hear contradictory evidence,” *Motion*, at p. 3, is contrary to the clear record in this docket. The Committee heard several hours of Dr. Ward’s cross examination of Mr. O’Neal’s testimony on issues relating to noise and shadow flicker, in addition to cross examination and testimony by several other parties on the issue. *See Tr. Day 3/Afternoon Session*, at p. 91-167; *Tr. Day 4/Morning Session*, at p. 7-66. In addition, Dr. Ward ignores the lengthy transcript from the Committee’s Deliberations in which opposing views are discussed at length, including the same concerns Dr. Ward again raises in the *Motion*. *See Deliberation*, *Tr. Day 2 Morning Session*, p. 80 – 128 (The Committee discussed extensively, among other concerns raised during the proceeding, the G-factor as well as making specific reference to “testimony from Mr. Ward about ducting and whether there could be ducting, [and] whether they’re weak or large temperature inversions.”)

Epsilon modeled the predicted sound levels associated with the operation of the Project for 344 potentially sound-sensitive structures within 2 miles from the proposed Project as required pursuant to Site 301.18(c)(3). *See Supplement to Application re: New Rules*, App. Exh. 34, Attachment 9, p. 7-3. The Sound Assessment predicted sound levels using the Cadna/A noise calculation software that employs the ISO 9613-2 international standard for sound propagation as required under the SEC’s rules. *See Site 301.18(c)(1)*. The software performs

highly refined computations that consider the effects of topography, ground attenuation, multiple building reflections, drop-off with distance, and atmospheric absorption. See *Supplement to Application re: New Rules*, App. Exh. 34, Attachment 9, p. 7-2. Consistent with the ISO 9613-2 standard, the model assumes favorable conditions for sound propagation, which corresponds to a moderate, well-developed ground-based temperature inversion. See *Supplement to Application re: New Rules*, App. Exh. 34, Attachment 9, p. 7-4. The model also includes the highly conservative assumption that each receptor is always located directly downwind from every turbine simultaneously. See *Supplement to Application re: New Rules*, App. Exh. 34, Attachment 9, p. 7-4; see also *Robert O'Neal Prefiled Testimony*, App. Exh. 6, p. 5. This hypothetical assumption allows for calculation of the theoretical "worst case" as required pursuant to the SEC's rules. Site 301.18(c)(3).

Dr. Ward and other intervenor groups, Counsel for the Public, and the Committee conducted an extensive cross-examination of Mr. O'Neal. During the course of this cross examination, Dr. Ward raised the issues reiterated in the Motion. While Dr. Ward stated during the adjudicative hearing, and now reasserts in the Motion, that he has concerns with the ISO 9613-2 standard, it is undisputed that the SEC Rules require the use of this model, nor is it in dispute that Mr. O'Neal employed this model in his evaluation of the Project. The model requires certain limited inputs to be determined and applied by the expert and the specification of how these inputs should be determined are not expressly defined by the SEC Rules and instead are left to professional judgment. The Subcommittee properly found, based on the evidence presented, that the sound report was prepared in accordance with professional standards and with the administrative rules. *Decision and Order*, at 153.

Throughout the proceeding, several parties cross-examined Mr. O’Neal regarding his use of a 0.5 ground attenuation factor or G-factor. Dr. Ward again rehashes these same arguments in the Motion without providing any new evidence that was not presented to, and considered by the Committee during the hearing. Mr. O’Neal, based on his professional judgment and substantial experience, chose to use a conservative assumption in using a G-factor of 0.5, which reflects an assumption that the ground surface within the project area is partly reflective and partly porous. *See Robert O’Neal Supplemental Testimony*, App. Exh. 13, p. 6-7. The Committee reached its conclusion based on a careful review of the full record and ultimately agreed with Mr. O’Neal that “the G factor of .5 seemed to be reasonable.” *Deliberations Day 2/Morning Session*, at p. 98-99. The Committee discussed the testimony provided in opposition to Mr. O’Neal’s use of a G-factor of 0.5, but ultimately concluded that this professional decision made sense given the circumstances in this docket.

The Motion fails to satisfy the statutory requirements for rehearing. The Meteorological Intervenors simply re-state their prior arguments without providing any information indicating that good cause exists for rehearing. The Motion does not identify any error of fact, reasoning or law. Rather, the Motion simply outlines a disagreement with the conclusion reached by the Committee.

B. Shadow Flicker

The Motion fails to consider the comprehensive rules and limits the Committee has adopted relating to shadow flicker. The Motion does not identify any evidence that was not already presented to and evaluated by the Committee during the course of the adjudicative hearings. The mere fact that the Committee disagreed with Dr. Ward’s conclusions regarding the calculation of shadow flicker does not equate to an error of reasoning. Dr. Ward’s

unsubstantiated claims do not provide any new information that the Committee did not already have the opportunity to consider and evaluate.

The Applicant conducted a shadow flicker study using *WindPRO* version 3.0.639 software (“WindPro”). *Supplement to Application re: New Rules*, App. Exh. 34, Attachment 6, p. 4-1. WindPro is a widely accepted software modeling package developed specifically for the design and evaluation of wind power projects. Contrary to Dr. Ward’s assertions, the Applicant calculated two different measurements; the worst-case or astronomical maximum calculation and the expected shadow flicker. The worst-case calculation assumes that the sun is always shining during the day and that the wind turbine is always operating. *Supplement to Application re: New Rules*, App. Exh. 34, Attachment 6, p. 4-1. Sunshine probabilities, obtained from the National Climatic Data Center, and expected wind turbine operational data are then incorporated into the model to calculate the expected shadow flicker. *Supplement to Application re: New Rules*, App. Exh. 34, Attachment 6, p. 4-1.

Dr. Ward asserts, without providing any basis, that the hours of shadow flicker will be greater than those predicted by the Applicant. Dr. Ward had ample opportunity to question the Applicant’s model and the record already contains the same arguments outlined in the Motion. Contrary to Dr. Ward’s claims, the expected shadow flicker modeling used by Mr. O’Neal is conservative as it assumes a “greenhouse” mode, with windows facing all directions. *Supplement to Application re: New Rules*, App. Exh. 34, Attachment 6, p. 4-1; *see also Robert O’Neal Prefiled Testimony*, App. Exh. 6, p. 15. The model also does not consider structures and vegetation that could screen the receptors and reduce expected shadow flicker. *Supplement to Application re: New Rules*, App. Exh. 34, Attachment 6, p. 6-1. There was extensive cross-examination of Mr. O’Neal on his testimony and report regarding shadow flicker. *See Tr. Day*

3/Afternoon Session, p. 141-167; *Tr. Day 4/Morning Session*, p. 7-46. Intervening parties, including Dr. Ward, had a full and complete opportunity to present their case. The positions articulated in the Motion have already been presented to the Committee for their consideration. The Committee is entitled to evaluate the evidence presented and give it the weight it feels is appropriate. The fact that Dr. Ward disagrees with the Committee's conclusions does not provide sufficient grounds to grant a rehearing.

C. Public Health & Safety

The Applicants demonstrated through the testimony of several witnesses, with extensive experience working with wind facilities, that the construction and operation of the Project will not have an unreasonable adverse effect on public health and safety. In addition to noise and shadow flicker, the Applicant also evaluated the potential effect from ice throw.

The proposed Siemens turbines are equipped with numerous system that monitor for ice buildup that could lead to potentially hazardous conditions. *See Jack Kenworthy Supplemental Testimony*, App. Exh. 24, p. 27; *see also Application*, App. Exh. 33, Section 1.6.b. These systems will automatically shut down an affected turbine under a range of icing conditions. *Tr. Day 2/Afternoon Session*, at p. 26. Siemens has over 1,050 of the exact turbine model proposed for this Project installed globally. *Tr. Day 2/Afternoon Session*, at p. 28. Mr. Marcucci, from Siemens, testified that he is “not aware of any situation where ice throw has caused injury or damage to property or people.” *Tr. Day 2/Afternoon Session*, at p. 29. Further, Mr. Stovall testified that while 67,000 turbines are located in conditions where icing can occur, “there have been no reported or documented injuries.” *Tr. Day 2/Morning Session*, at p. 147. Thus, the evidence indicates that risks from ice throw are extraordinary small. While Dr. Ward contends that this information is “absence of evidence,” in fact, Mr. Stovall's extensive experience and

testimony provides concrete evidence that the conditions suggested by Dr. Ward do not and will not occur.

Dr. Ward presents unsubstantiated, speculative statements in the Motion suggesting that no objective evaluation was completed by the Committee in their deliberations of the likely distance of ice throw. *Motion*, at p. 15. Dr. Ward's argument does not reflect the thorough deliberations and evaluation completed by the Committee. *Deliberations, Day 2 Afternoon*, at p. 65-74. The Committee clearly considered opposing evidence, including reference to cross examination by Ms. Linowes. Ultimately the Committee concluded that based on "information provided by the Applicant [] ice throw is not a risk." *Deliberations Day 2 Afternoon Session*, at p. 72. While the Committee found "the information provided by the Applicant [to be] the most credible evidence," *Decision and Order*, at p. 156, this does not suggest the Committee did not consider other evidence presented, including the same positions restated in the Motion.

In addition to ice throw, Dr. Ward also asserts, without any reference to the record, that the Committee improperly failed to address safety concerns associated with the use of radar lighting. Dr. Ward's assertion that it is the responsibility of the Committee to independently seek out and evaluate evidence to contradict or refute affirmative evidence provided by the Applicant suggests a failure to understand the adjudicative process. Dr. Ward states that the Committee failed to get "vital information on the total time, and/or times, during the night which will require lighting." *Motion*, at p. 16. Dr. Ward had ample opportunity to cross examine the Applicant's witnesses and failed to adequately raise this concern. After extensive discussion on the use of radar activated lighting, the Committee concluded that this was an appropriate form of mitigation. Dr. Ward has failed to provide any evidence not already presented to support his

assertion that the use of a radar activated lighting system will adversely affect public health and safety.

D. Aesthetics

The Committee heard several days of testimony from the Applicant's expert David Raphael, Counsel for the Public's expert, Kellie Connelly, and from numerous intervenors on the issue of aesthetics. The deliberations were thorough and comprehensive and took into consideration the specific criteria outlined in the newly adopted SEC rules. *See Site 301.14(a)(1)-(7)*. Dr. Ward has not provided any basis in the Motion to suggest that the Committee failed to adequately consider the evidence presented and reach a well-reasoned determination. In fact, the Motion is devoid of any reference to the deliberation or adjudicative hearing transcripts regarding the issue of aesthetics.

The Applicant engaged David Raphael from LandWorks to conduct a visual assessment of the Project and to prepare a VA. Mr. Raphael has been a landscape architect and planner, in both the public and private sector, since 1976. *David Raphael Pre-Filed Testimony*, App. Exh. 9, Attachment DR-1. LandWorks has used the methodology employed in conducting the VA for this Project over "a half a dozen times, in a number of different projects, and including wind projects in Maine." *Tr. Day 6/Morning Session*, at p. 118. LandWorks performed a comprehensive assessment of scenic resources within the project area using a wide range of sources. They also spent a significant amount of time visiting many of the 290 resources initially identified in order to get a sense for the region as a whole, the significance of these scenic resources within the context of the region, and the extent, nature and duration of public use of these resources, as required by the SEC rules. *LandWorks Visual Assessment*, App. Exh. 33, Appendix 9a, p. 2. LandWorks ultimately concluded that given the limited visibility of this

Project, the Project, in relation to the existing character of the landscape and resources, is not dominant and from a holistic landscape perspective will not be an overly significant or dominant feature in the landscape. *David Raphael Prefiled Testimony*, App. Exh. 9, p. 14.

During the adjudicative hearings, Dr. Ward did not purport to be an expert on visual impact. While the Committee did spend a significant amount of time during the deliberations evaluating the views presented in visual simulations, the Committee also considered all other aspects of the testimony presented both by the Applicant as well as by other parties to the proceeding. The Committee's final Order reflect this thorough review of the record. *See Deliberations Day 1 Afternoon*, at p. 4-141. It is unclear from the Motion what aesthetics issues Dr. Ward believes the Committee overlooked or mistakenly conceived. What is clear is that the Motion fails to identify any new evidence not already before the Committee that could not have been introduced during the proceeding and therefore, the Motion should be denied.

E. Mitigation

The Motion asserts that the Committee improperly failed to take into account the effect that mitigation of potential noise or shadow flicker exceedances may have on the efficiency of the Project. In fact, this concern was raised and addressed during the course of the proceedings. Dr. Ward specifically asked the Applicant about these same concerns. The Committee heard testimony from Mr. Weitzner that the Applicant has a very good idea of what the cost will be to curtail the project in order to comply with noise and shadow flicker requirements and that there is no "situation where the curtailment that [the Applicant] might need to do for sound or shadow flicker could have any kind of material financial impact on this Project." *Tr. Day 1/Morning Session*, at p. 100-02. Because Dr. Ward merely ask the Committee to reach a different

conclusion on this issue based on the same record evidence and fails to point to new evidence that could not have been introduced during the proceeding, the Motion should be rejected.

III. Conclusion

Based on the foregoing, the Meteorological Intervenors have not met the standard for a rehearing pursuant to RSA 541:3. The record in this docket is extensive and the Committee's deliberations and final Order reflect a thorough review. The Meteorological Intervenors have failed to present any issue that the Committee has overlooked or mistakenly conceived. Moreover, the Motion fails to articulate any new evidence that was not before the Committee during the adjudicative hearings. Because the Motion merely asks that the Committee reach a different conclusion on the same evidence it should be denied.

WHEREFORE, the Applicants respectfully request that the Committee:

- A. Deny the motion for rehearing; and
- B. Grant such further relief as requested herein and as deemed appropriate.

Respectfully submitted,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: April 5, 2017

By: Rebecca Walkley for
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Certificate of Service

I hereby certify that on the 5th of April 2016, an original and one copy of the foregoing Objection to Motion for Rehearing were hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.

Rebecca Walkley
Rebecca Walkley