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April 17, 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**

Dear Ms. Monroe:

Enclosed for filing in the above-captioned docket, please find the Applicant's Motion to Schedule Meeting for Further Consideration of Rehearing and Lift Suspension.

We have provided members of the distribution list with electronic copies of this Motion 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**

**ANTRIM WIND ENERGY, LLC'S MOTION TO SCHEDULE MEETING
FOR FURTHER CONSIDERATION OF REHEARING
AND LIFT SUSPENSION**

Antrim Wind Energy, LLC (the "Applicant" or "AWE") by and through its attorneys, McLane Middleton, Professional Association, respectfully submits this Motion to Schedule Hearing for Further Consideration of Rehearing and Lift Suspension (the "Motion"). As explained below, if the Presiding Officer does not lift the suspension he issued on April 3, 2017, AWE will suffer direct and immediate harm. Accordingly, the Applicant asks the Presiding Officer to promptly issue an order scheduling a meeting of the Subcommittee for the purpose of further considering, and deciding, the motions for rehearing, and lifting the suspension.

I. BACKGROUND

The Applicants filed an Application for a Certificate of Site and Facility on October 2, 2015 with the Committee. The Site Evaluation Committee ("SEC" or the "Committee") accepted the Application as complete on December 1, 2015. The Subcommittee designated for this proceeding held adjudicatory hearings between September 13, 2016 and November 7, 2016. Following the conclusion of the hearings, the Subcommittee held deliberations on December 7, 9, and 12, 2016. On March 17, 2017, the Subcommittee 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 “Decision”). The Presiding Officer issued an Order Suspending Decision and Order Granting Certificate of Site and Facility with Conditions on April 3, 2017.

Pursuant to RSA 541:3 and Site 202.29, a motion for rehearing shall be filed within 30 days of the date of a committee decision or order. The Meteorological Intervenor Group filed a Motion for Rehearing on March 25, 2017. On April 14, 2017 a Joint Motion for Rehearing of the Abutting Landowners Group, Non-Abutting Landowners Group, the Levesque-Allen Group, the Stoddard Conservation Commission, and the Windaction Group was filed. The Applicant filed an Objection to the Meteorological Group’s Motion for Rehearing on April 5, 2017. RSA 541:5 requires that after a Motion for Rehearing is filed “the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of *pending further consideration.*” (Emphasis added.) The pertinent SEC Rule generally tracks RSA 541:5. See Site 202.29(e).

The suspension has limited the Applicant’s ability to move forward as anticipated and will cause significant hardships if left in place. AWE is currently in the final stages of negotiating its Large Generator Interconnection Agreement (“LGIA”) with ISO New England, Inc. and Eversource. AWE expects to execute the LGIA later this month. Under the ISO New England generator interconnection procedure rules, if an interconnection customer, AWE in this case, does not have its major permits at the time that the LGIA is executed, it must post additional financial security in the amount of 20% of the expected interconnection costs. AWE has provided evidence of its major permits to ISO New England and Eversource as required to satisfy this LGIP provision and avoid posting the additional security. If the suspension remains in place at the time of LGIA execution, AWE will not have its major permits and will be

required to post the security. The amount of the security required would be in excess of \$1 million. This is a direct and immediate result of this suspension and is harmful to AWE.

II. DISCUSSION

The Presiding Officer's suspension of the Decision appears to have been ordered solely for the procedural purpose of complying with the statutory requirement that the SEC take action on all motions for rehearing within 10 days of filing. RSA 541:5; *see also* Site 202.29 (e). There is no substantive basis for suspending the Decision, which would require action by the Subcommittee pursuant to RSA 162-H:12. While the statute permits the Committee to suspend a certificate for various reasons to enforce the terms of a certificate, in order to take such action, an Applicant must fail to comply with the conditions of a certificate in some way, which is not the case here.¹ *See* RSA 162-H:12(I)-(III).

The Applicant therefore asks the Presiding Officer to lift his suspension and schedule a meeting for purposes of further considering the motions for rehearing filed within the designated time period. Once the Presiding Officer issues such an order, the underlying basis for the suspension will no longer exist inasmuch as the Subcommittee will be taking action to further consider the motion for rehearing.

The Applicant is unaware of any situation in which the Committee granted a certificate and subsequently suspended the certificate pending the rehearing period. It is clear that, in this case, the suspension was not in response to any enforcement provision permitted under the rules. It was intended solely to comply with the statutory timeline.

¹ RSA 162-H:12 further requires the Committee, except in an emergency, to give "written notice of its consideration of suspension and of its reasons therefor and shall provide an opportunity for a prompt hearing." RSA 162-H:12 (III). In this case, there is no evidence to suggest that the Certificate was suspending due to an emergency and no notice of a hearing to consider suspension was provided nor were the reasons for suspension provided, beyond the Committee's effort to comply with a procedural timeline.

III. CONCLUSION

A protracted continuation of the suspension beyond the time required to schedule a meeting for further consideration of the pending motion for rehearing, is inconsistent with RSA 541-A and the SEC Rules. In addition, it effectively serves as an injunction and in this case creates an unnecessary financial hardship for the Applicant. Suspension of an order should only be used in limited cases and should not be left in place after being invoked solely to satisfy a procedural timeline. To the extent this suspension is valid, despite the lack of collective action by the Subcommittee,² the Applicant respectfully requests that it be lifted promptly to allow the Applicant to move forward with all activities permitted by the Certificate of Site and Facility.

WHEREFORE, the Applicant respectfully requests that the Committee:

- A. Promptly schedule a meeting to further consider outstanding motions for rehearing and lift the suspension of the Decision; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: April 17, 2017

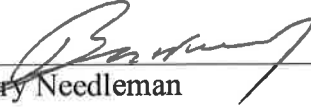
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² RSA 162-H:4,V authorizes a presiding officer or hearing officer to decide certain procedural matters related to a hearing. There is a serious question whether such matters include suspending a decision and order for purposes of rehearing.

Certificate of Service

I hereby certify that on the 17th of April 2017, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List for this docket.



Barry Needleman