

**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**

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

NOW COME, Janice Longgood, Bruce and Barbara Berwick, and Mark and Brenda Schaefer on behalf of the Abutting Landowners Group, Richard and Lorraine Block, Annie Law, Robert Cleland, Jill Fish, and Kenneth Henninger on behalf of the Non-Abutting Landowners Group, Mary Allen on behalf of the Levesque-Allen Group, Geoffrey Jones on behalf of the Stoddard Conservation Commission, and Lisa Linowes on behalf of the Windaction Group, (collectively "the Opposing Intervenors") and hereby object to the Motion to Schedule Meeting for Further Consideration of Rehearing and Lift Suspension ("Motion to Lift") filed by Antrim Wind Energy, LLC ("the Applicant"). In support thereof, the Opposing Intervenors state as follows:

I. FACTUAL AND PROCEDURAL HISTORY

1. On March 17, 2017, the Subcommittee of the Site Evaluation Committee ("Subcommittee") issued a Decision and Order Granting Application for a Certificate of Site and Facility with Conditions ("Decision"), allowing the Applicant to construct nine (9) wind turbines on Tuttle Ridge in the Town of Antrim.

2. On March 25, 2017, the Meteorological Intervenor Group filed a Motion for Rehearing.

3. In response, the Subcommittee issued an Order Suspending Decision and Order Granting Certificate of Site and Facility with Conditions (“the Suspension”) dated April 3, 2017.

4. The Applicant objected to the Meteorological Intervenor Group’s Motion on April 5, 2017.

5. On April 14, 2017, the Opposing Intervenors filed a Motion for Rehearing, and on April 17, 2017, Counsel for the Public also filed a Motion for Rehearing.

6. On April 17, 2017, the Applicant filed the above referenced Motion to Lift, asserting that the Subcommittee’s Suspension should be lifted because the Suspension will “cause significant hardships if left in place.” Specifically, the Applicant claims that it will be required to post “in excess of \$1 million in security” as part of the negotiation and execution of a “Large Generator Interconnection Agreement” (“LGIA”).

II. DISCUSSION

7. For the reason stated below, the Subcommittee should deny the Applicant’s Motion to Lift and should maintain the Suspension of its Decision because the Applicant will not face any harm from the Suspension, let alone “significant hardship.” Moreover, the Suspension should be maintained because, if lifted, the Applicant could legally proceed with making improvements to the site, thereby frustrating the options of the Subcommittee and the parties should rehearing be granted in this matter.

8. First, the Applicant argues that the Large Generator Interconnection Protocols (“LGIP”) of ISO-NE will require the Applicant to post additional security if the Suspension is not lifted, claiming that the security required would be in excess of \$1 million and would cause “significant hardships” to the Applicant. The Applicant’s assertions are misleading and lack merit because, under Section 11.3.1.2 of the LGIP, the purported “security” alleged by the

Applicant is actually a refundable deposit. See Large Generator Interconnection Procedures at § 11.3.1.2, appended hereto as Exhibit A. In other words, two scenarios exist: (1) the Project does not move forward, and the Applicant receives the deposit back or (2) the Project moves forward, and the deposit constitutes monies that the Applicant would spend anyway.¹ To claim that the Subcommittee's Suspension will cause any undue hardship under these circumstances lacks any credibility, and the Subcommittee should deny the Applicant's Motion to Lift.

9. Second, contrary to the Applicant's assertions, there have been instances in which the Site Evaluation Committee issued suspensions pending resolution of motions for rehearing. In the Groton Wind and Granite Reliable proceedings, the Site Evaluation Committee suspended its decisions granting the applications for certificate of site and facility in light of pending motions for rehearing. See Re: Application of Groton Wind, LLC for a Certificate of Site and Facility for a Renewable Energy Facility in Groton, New Hampshire, Procedural Order and Notice of Public Meeting (dated June 24, 2011); Application of Granite Reliable Power, LLC Motions for Rehearing, Procedural Order and Notice of Public Meeting (dated September 11, 2009). Similarly, the Applicant is well aware that the Site Evaluation Committee suspended its decision on Antrim Wind I following motions for rehearing filed in that docket. See Re: Application of Antrim Wind, LLC, Order Suspending Decision and Order Denying Application for a Certificate of Site and Facility Pursuant to RSA 541:5 (dated May, 28, 2013).

10. Third and last, the Suspension of this Decision comports with the public interest and is inherently reasonable. RSA 541:5 provides that the commission shall, within ten days, either grant or deny the motion for rehearing, "or suspend the order or decision . . . pending further consideration, and any order of suspension may be upon such terms and conditions as the

¹ Moreover, the cost of \$1 million is insignificant when compared to the total Project costs, which are anticipated to range between \$63-65 million per the Applicant's own representations.

commission may prescribe.”² While this rule is applicable to most administrative hearings, its application is particularly important in the context of the Site Evaluation Committee, where the issuance of a Certificate of Site and Facility authorizes an applicant to move forward with the construction and development of significant pieces of energy infrastructure that may have large environmental, ecological, aesthetic, and public, safety, and health impacts.

11. Indeed, under these circumstances, the Suspension is similar to a stay of a municipal planning board’s decision pursuant to RSA 677:15, which provides that an appeal of a planning board’s decision to a Superior Court stays the proceedings of the planning board, including any decisions of that planning board. See Town of Freedom v. Town of Ossipee and Ossipee Planning Board, Docket No. 212-2016-CV-00165 (Carrol Cnty. Super. Ct. March 29, 2017) (Ignatius, J.). As Judge Ignatius found in the Freedom case, the policy behind this stay is as follows:

Because the decisions rendered by planning boards often involve the approval of construction or alteration of land or physical structures, such a stay during the pendency of the appeal to the Superior Court prevents any physical alterations that could potentially be subject to reversal should the Superior Court find that the planning board’s decision was in error. Without such a stay . . . the options of the parties and the planning board’s decision-making ability on remand would be frustrated if the construction or alteration at issue were already partially or fully completed.

Id. at *9. RSA 541:5 serves an analogous purpose here: without the Suspension of the Subcommittee’s decision pending rehearing, the Applicant has the legal authority to not just

² The Applicant claims, citing RSA 162-H:12, that the Subcommittee should have provided notice and a hearing prior to suspending its decision. The Applicant misapplies RSA 162-H:12. That statute, which is captioned “Enforcement,” pertains to the Subcommittee’s remedies when it determines that the conditions in a Certificate of Site and Facility have been violated.

That statute is not applicable when a decision issuing a Certificate of Site and Facility has been challenged through a motion for rehearing in accordance with RSA chapter 541. RSA 541:5 provides independent and separate authority for the Subcommittee to suspend its decisions in the specific contexts of Motions for Rehearing. The Subcommittee did not need to make any findings, issue any notices, or hold any hearings prior to issuing the suspension in this instance. The Applicant’s argument is not persuasive.

execute the LGIA but to proceed with the construction of the Project, including, but not limited to, engaging in any clearing activities and site preparation. These activities can alter the landscape, which in turn would impact the analyses required should rehearing be granted. These activities would further frustrate the various options of the Subcommittee and the parties should rehearing be granted and the various issues raised be revisited. The Subcommittee's Suspension, therefore, serves the purpose of RSA 541:5 and protects the public interest.

III. CONCLUSION

12. For the reasons set forth above, the Applicant has not provided any credible or persuasive argument for this Subcommittee to lift its Suspension. The Applicant does not face any substantial hardship related to the Suspension, the Suspension comports with the Subcommittee's prior practices, and the Suspension serves the public interest and the intent of RSA 541:5.

WHEREFORE, the Opposing Intervenors respectfully requests that this Committee:

- A. Deny the Applicant's Motion to Schedule Meeting for Further Consideration of Rehearing and Lift Suspension;
- B. Maintain the Subcommittee's suspension of its Order and Decision Granting Application for a Certificate of Site and Facility with Conditions; and
- C. Grant such further relief as is just and equitable.

Dated this 26th day of April, 2017.

Respectfully submitted,

The Abutting Landowners Group, the Non-Abutting
Landowners Group, the Levesque-Allen Group, the
Stoddard Conservation Commission, and the
Windaction Group,

By and through their attorneys,

DONAHUE, TUCKER & CIANDELLA, PLLC

/s/ **Eric A. Maher**

Eric A. Maher
NHBA # 21185
225 Water Street
Exeter, NH 03833
(603)778-0686
emaher@dtclawyers.com

Certificate of Service

I hereby certify that I served a copy of the foregoing Pleading pursuant to Site 202.07 to
the current service list in this Docket this 26th day of April, 2017.

/s/ Eric A. Maher
Eric A. Maher, Esq.

EXHIBIT

A

SCHEDULE 22

LARGE GENERATOR INTERCONNECTION PROCEDURES

Interconnection Customer's existing Large Generating Facility and the Interconnection Customer has certified in the Interconnection Request that it has Site Control and that the modification proposed in the Interconnection Request does not require additional real property.

11.3.1.2 Development Milestones. Within fifteen (15) Business Days after receipt of the final LGIA, the Interconnection Customer also shall provide to the System Operator reasonable evidence that one or more of the following milestones in the development of the Large Generating Facility, to be elected by the Interconnection Customer, has been achieved: (i) the execution of a contract for the supply or transportation of fuel to the Large Generating Facility; (ii) the execution of a contract for the supply of cooling water to the Large Generating Facility; (iii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Large Generating Facility; (iv) execution of a contract for the sale of electric energy or capacity from the Large Generating Facility; (v) application for an air, water, or land use permit.

At the same time, the Interconnection Customer shall commit to a schedule for the payment of upgrades identified in the Interconnection Studies or an E&P Agreement and either: (A) provide evidence of approvals for all Major Permits, as defined in Section III.13.1.1.2.2(a) of the Tariff, or (B) provide a refundable deposit to the Interconnecting Transmission Owner, at execution of the LGIA, of 20 percent of the total costs for the Interconnection Facilities and other upgrades identified in the Interconnection Studies or an E&P Agreement, unless the Interconnecting Transmission Owner's expenditure schedule for the Interconnection Facilities and other upgrades calls for an initial payment of greater than 20 percent of the total upgrade costs, in which case the scheduled initial payment must instead be made at time of LGIA execution. If the Interconnection Customer selects option (B) above, it shall also commit in the LGIA to the achievement of: (i) milestones for the completion of Major Permit approvals, and (ii) in the case of a CNR Interconnection Request, milestones to align the LGIA with the fulfillment of terms outlined in Section III.13 of the Tariff for participation in the Forward Capacity Market.

11.3.2 Execution and Filing of LGIA. Within fifteen (15) Business Days after receipt of the final LGIA, (i) the Interconnection Customer and Interconnecting Transmission Owner shall execute three (3) originals of the tendered LGIA and return them to the System Operator, who will send an original to Interconnecting Transmission Owner and Interconnection Customer; or (ii) the Interconnection Customer shall request in writing that the System Operator and the Interconnecting Transmission Owner jointly file with the Commission an LGIA in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the executed originals of the tendered LGIA (if it does not conform

with a Commission-approved standard form of interconnection agreement) or the request to file an unexecuted LGIA, the System Operator and Interconnecting Transmission Owner, in accordance with Section 11.3.3 or Section 11.3.4, as appropriate, shall jointly file the LGIA with the Commission, together with its explanation of any matters as to which the System Operator, Interconnection Customer or Interconnecting Transmission Owner disagree and support for the costs that the Interconnecting Transmission Owner proposes to charge to the Interconnection Customer under the LGIA. An unexecuted LGIA should contain terms and conditions deemed appropriate by the System Operator and Interconnecting Transmission Owner for the Interconnection Request. If the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted LGIA, they may proceed pending Commission action.

With respect to the interconnection of an Interconnection Customer under Schedule 22, the LGIA shall be a three-party agreement among the Interconnecting Transmission Owner, the System Operator and the Interconnection Customer. If Interconnecting Transmission Owner, System Operator and Interconnection Customer agree to the terms and conditions of a specific LGIA, or any amendments to such an LGIA, then the System Operator and Interconnecting Transmission Owner shall jointly file the executed LGIA, or amendment thereto, with the Commission under Section 205 of the Federal Power Act. To the extent the Interconnecting Transmission Owner, System Operator and Interconnection Customer cannot agree to proposed variations from the standard form of LGIA in Appendix 6 or cannot otherwise agree to the terms and conditions of the LGIA for such Large Generating Unit, or any amendments to such an LGIA, then the System Operator and Interconnecting Transmission Owner shall jointly file an unexecuted LGIA, or amendment thereto, with the Commission under Section 205 of the Federal Power Act and shall identify the areas of disagreement in such filing, provided that, in the event of disagreement on terms and conditions of the LGIA related to the costs of upgrades to such Interconnecting Transmission Owner's transmission facilities, the anticipated schedule for the construction of such upgrades, any financial obligations of the Interconnecting Transmission Owner, and any provisions related to physical impacts of the interconnection on the Interconnecting Transmission Owner's transmission facilities or other assets, then the standard applicable under Section 205 of the Federal Power Act shall apply only to the Interconnecting Transmission Owner's position on such terms and conditions.

11.3.3 The Interconnecting Transmission Owner, acting on its own or jointly with the System Operator, may initiate a filing to amend this LGIP and the standard form of LGIA in Appendix 6 under Section 205 of the Federal Power Act and shall include in such filing the views of System Operator, provided that the standard applicable under Section 205 of the Federal Power Act shall apply only to the Interconnecting