

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-02

**Re: Application of Antrim Wind Energy, LLC
For a Certificate of Site and Facility**

July 5, 2016

ORDER ON PENDING MOTIONS

I. INTRODUCTION

This order addresses a number of procedural motions that have been filed in this docket. The motion filed by the Windaction Group (Windaction) seeking an extension of the procedural schedule is denied. The motion filed by the Audubon Society of New Hampshire (ASNH) to extend the expert witness disclosure deadline by one day is granted. A number of parties also seek additional site visits to areas that were not visited by the Subcommittee on its initial site visit. Those requests are granted in part and denied in part.

II. BACKGROUND AND DESCRIPTION OF THE PROJECT

On October 2, 2015, Antrim Wind Energy, LLC (Antrim Wind or Applicant), filed an Application for a Certificate of Site and Facility (Application) with the Site Evaluation Committee (Committee). Antrim Wind proposes to site, construct, and operate 9 Siemens SWT-3.2-113 direct drive wind turbines capable of generating 3.2 MW for a total nameplate capacity of 28.8 MW and associated civil and electrical infrastructure (Project). *See* Application, at 19, 27. The Project is proposed to be located in the Town of Antrim on the Tuttle Hill ridgeline spanning southwestward to the northeastern slope of Willard Mountain (Site). *Id.* at 5. The Project will be constructed primarily on the ridgeline that starts approximately 0.75 miles south of NH Route 9 and runs south-west, for approximately 2 miles. *Id.* The Project will be located in

the rural conservation zoning district on private lands owned by six landowners and leased by Antrim Wind. *Id.* at 5-6. Antrim Wind seeks the issuance of a Certificate of Site and Facility approving the siting, construction, and operation of the Project.

An Order accepting the Application was issued on December 1, 2015.

On February 25, 2016, a prehearing conference was held in this docket. During the prehearing conference, Counsel for the Public and intervenors requested additional site visits to the Project area. *See* Report of Prehearing Conference, March, 2, 2016, p. 4-5.

A Procedural Order in this docket was issued on March 25, 2016. The Procedural Order, among other deadlines and notifications, set forth the deadline for the Audubon Society of New Hampshire (ASNH) to disclose witnesses for May 23, 2016, and for the intervenors' to disclose witnesses and submit pre-filed testimony for May 23, 2016.

On April 15, 2016, the Applicant filed a Partially Assented-To Motion for Protective Order and Confidential Treatment requesting that the Subcommittee issue an Order that would protect financial documents that were requested by Counsel for Public, from disclosure to the intervenors in this docket. That motion was granted in part and denied in part.

The following motions were also received:

- Partially Assented-To Motion to Expand the Schedule; and
- Majority Assented-To Motion of ASNH to Extend Deadline by One Day.

This Order addresses the pending motions in this docket: (i) Motion to Expand the Schedule; (ii) Motion to Extend Deadline by One Day; and (iii) Requests for Additional Site Inspection.

III. MOTIONS

A. Motion to Expand the Schedule

a. Position of Parties

Windaction, Lorraine Carey Block and Richard Block (collectively the Intervenors) requesting that the deadline for disclosure of their witnesses, filing of their pre-filed testimony and all other procedural deadlines be extended by one month. The Intervenors argue that a continuance is warranted because they did not have the opportunity to review financial information the Applicant seeks to protect and would like to review and address these documents prior to disclosing their witnesses and filing of their pre-filed testimony. The Intervenors also argue that the discovery deadlines should be extended by one month so that a second round of site inspections can take place before the disclosure of witnesses and filing of pre-filed testimony.¹

The Applicant objected to the Intervenors' request on May 24, 2016. The Applicant claims that the Intervenors cannot request an extension of the procedural schedule because they failed to file a formal motion to compel production of documentation the Applicant seeks to protect. The Applicant acknowledges that Windaction requested the Subcommittee to order disclosure of said documentation in its Objection to the Applicant's Motion for Protective Order, but asserts that this request was improper and untimely.

An objection to the motion to expand the procedural schedule was also received from the Town of Antrim. The Town of Antrim argues that the continuance requested by the Intervenors

¹ In their original motion, the Intervenors also requested an extension of the procedural deadlines so that, prior to the filing of their pre-filed testimony, they can receive an Order on their Motion to bring the Application into compliance with the Committee's rules as it relates to the supplemental materials that were filed by the Applicant on March 10, 2016. On May 25, 2016, the Intervenors, however, withdrew their Motion Requiring Portions of the Antrim Wind, LLC Application be Brought into Compliance.

will disrupt the procedural schedule and is unnecessary. The Town of Antrim argues that the Intervenor's request to continue the deadline is speculative. The Town also argues that the Intervenor does not need site inspections to identify and disclose their witnesses and to prepare and file their pre-filed testimony.

Finally, an Objection to the Intervenor's motion was received from the International Brotherhood of Electrical Workers (IBEW). IBEW argues that Windaction's motion is not "reasonably justified under the current circumstances." IBEW asserts that the Intervenor failed to file a timely motion to compel and, therefore, cannot request the Subcommittee to continue procedural deadlines so that they can review these documents they expect to receive. IBEW also claims that the Intervenor's motion should be denied because they failed to state valid reasons demonstrating that they cannot proceed with discovery, as scheduled, without having additional site inspections.

b. Analysis and Findings

The Intervenor's request to continue the procedural schedule by one month is based on two arguments: (i) the need to evaluate and address confidential information the Applicant seeks to protect; and (ii) the need to conduct second a round of site inspections. Those arguments do not warrant an extension of the procedural schedule.

The current Procedural Schedule provides that supplemental pre-filed testimony shall be due from all parties on or before August 15, 2016. The adjudicative hearings will not commence until September, 2016. The current procedural schedule contains sufficient time for the parties to execute confidentiality agreements and complete discovery of information that is protected from public disclosure prior to August 15, 2016. The current schedule also allows the filing of supplemental pre-filed testimony by August 15, 2016.

It is unclear why the Intervenors cannot disclose their witnesses and provide pre-filed testimony and follow the deadlines currently set forth by the Order without having additional site inspections. The site inspections can be conducted at any time during these proceedings. They are not conducted to assist the parties with discovery, but conducted in order to “assist the committee or subcommittee in reaching a determination in the proceeding.” *See* N.H. CODE ADMIN. R. ANN. Site 202.13. The parties should be able, and are required to, follow the procedural schedule in effect regardless of the timing of the site inspections. The Partially Assented-To Motion to Expand the Schedule is denied.

B. Motion to Extend Deadline by One Day

A Motion to Extend Deadline by One Day was received from ASNH, requesting a one-day extension of the deadline for the disclosure of expert witnesses from May 23, 2016 to May 24, 2014. ASNH’s request is reasonable. ASNH’s Motion to Extend Deadline by One Day is granted.

C. Site Inspection

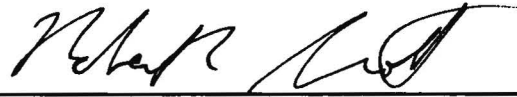
During the prehearing conference, Counsel for the Public and intervenors requested that the Subcommittee conduct additional site inspections. Site 202.13, provides that the subcommittee, on its own motion, can conduct a site visit of any property that is the subject of a proceeding, if a site visit will “assist the committee or subcommittee in reaching a determination in the proceeding.” Site 202.13, provides that the presiding officer shall determine who may attend any site visit and specify the conditions and restrictions applicable to the site visit. Accordingly, Counsel for the Public’s and Intervenors’ request for one additional site inspection is granted, subject to specific conditions and restrictions as determined by the presiding officer.

IV. ORDERS

It is hereby ordered, that Partially Assented-To Motion to Expand the Schedule is denied; and

It is further ordered, that Majority Assented-To Motion of ASNH to Extend Deadline by One Day is granted.

By Order of the Site Evaluation Committee, this fifth day of July, 2016.



Robert R. Scott, Presiding Officer
Site Evaluation Committee