

**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 6, 2016

ORDER ON MOTION
FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

I. INTRODUCTION

On April 15, 2016, Antrim Wind Energy, LLC, (Antrim Wind or Applicant) filed a Partially Assented-To Motion for Protective Order and Confidential Treatment (Motion.) This Order grants the Motion, in part, and denies the Motion, in part.

II. BACKGROUND AND DESCRIPTION OF THE PROJECT

On October 2, 2015, Antrim Wind 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. A Procedural Order in this docket was issued on December 10, 2015. The Procedural Order, among other deadlines and notifications, set forth the deadline for data requests.

Pursuant to the Procedural Order, Counsel for the Public propounded data requests asking the Applicant to provide the following documents and information:

- Detailed information on other projects in which Mr. Weitzner, Mr. Manahilov, Ms. Valdovinos, Mr. Shaw, Walden Green Energy, LLC, Walden Renewables, LLC, and RWE Supply & Trading have been involved including the amount invested and the total project cost;
- A copy of Applicant's *pro forma* financial statements;
- A copy of the Balance of Plant Contract with Reed & Reed and the Preconstruction Service Agreement;
- A copy of Reed & Reed's cost estimates;
- A copy of the Turbine Supply Agreement and Service and Maintenance Agreement with Siemens;
- A copy of all letters of intent, or other agreements or contracts with financing institutions including any memorandum of understanding (MOU); and
- Information about Power Purchase Agreements.

The Applicant provided some of the requested information and documentation to Counsel for the Public and intervenors. Thereafter the Applicant filed the Motion requesting an Order that would protect the requested information and documentation from further disclosure.

On April 25, 2016, Windaction Group (Windaction) and the Allen/Levesque Group of Intervenors (Allen/Levesque) filed separate Objections to the Applicant's request.

III. APPLICANT'S MOTION AND OBJECTIONS

A. Motion

1. Bank Term Sheets and Investment Information

The Applicant reports that Counsel for the Public requested the following information and documentation: (i) detailed information on other projects in which Mr. Weitzner, Mr. Manahilov, Ms. Valdovinos, Mr. Shaw, Walden Green Energy, LLC, Walden Renewables, LLC,

and RWE Supply & Trading have been involved, including the amount invested and the total project cost; and (ii) letters of intent, MOUs or other agreements or contracts with financing institutions.

The Applicant states that it provided documentation regarding the involvement of Mr. Weitzner, Mr. Manahilov, Ms. Valdovinos, Mr. Shaw, Walden Green Energy, LLC, Walden Renewables, LLC, and RWE Supply & Trading in other projects to Counsel for the Public and other parties in this docket. Information pertaining to the amount invested and the total project cost was provided only to Counsel for the Public. Likewise, the Applicant advised that letters of intent, MOUs or other agreements, or contracts with financing institutions would be provided exclusively to Counsel for the Public. The Applicant also indicates that it expects to receive letters of interest from debt and tax equity providers. The Applicant agreed to provide those letters to Counsel for the Public.

The Applicant requests that the Subcommittee protect the documents provided exclusively to Counsel for the Public from disclosure to other parties and members of the public. In support, the Applicant asserts that information in dispute is highly sensitive financial and commercial information that, if disclosed, may damage the Applicant's competitive position and financial status.

2. Agreements with Siemens and Reed & Reed

Counsel for the Public requested that the Applicant to provide the following agreements with third parties: (i) the Balance of Plant Contract with Reed & Reed; (ii) the Preconstruction Service Agreement with Reed & Reed; (iii) the Reed & Reed's cost estimates; (iv) the Turbine Supply Agreement with Siemens; and (v) the Service and Maintenance Agreement with Siemens.

The Applicant acknowledges that it currently has in its possession and under its control, the draft Balance of Plant Contract and cost estimates. It further states that it provided said documents to Counsel for the Public. The Applicant expects to finalize the Balance of Plant Contract at the same time it finalizes the construction loan agreements for the Project. Once finalized, the Balance of Plant Contract will be provided to Counsel for the Public.

As to the agreements with Siemens, the Applicant asserts that it is in the process of negotiating an agreement with Siemens for the Turbine Supply Agreement and Service and Maintenance Agreement. Once finalized, the Applicant agrees to provide copies to Counsel for the Public. The Applicant requests the Subcommittee to seal these documents and not to disclose them to any other party in these proceedings. The Applicant argues that those documents contain confidential financial information that, if disclosed, would give the Applicant's competitors an unfair advantage.

3. Applicant's *Pro Forma*

The Applicant provided its *pro forma* financial statements to Counsel for the Public. The Applicant provided the other parties with a document outlining a 20-year projection of revenues, a 20-year projection of operating expenses including categories, a description of the capital that will go into the financing of the Project, and a projection for how the tax credits will be monetized. The Applicant states that the *pro forma* financial statement should not be provided to the intervenors, parties, and members of the public because it contains information that is protected under confidentiality agreements with third parties, *i.e.* cost information, energy and renewable energy credit price information, and operational expenditure information. The Applicant also asserts that the disclosure of that information will damage its financial position and may jeopardize the negotiation of a Power Purchase Agreement.

4. Information About Power Purchase Agreement(s)

The Applicant is in the process of negotiating a Power Purchase Agreement. It requests the Subcommittee to protect “information about,” Power Purchase Agreement(s) from disclosure to the intervenors and members of the public.

B. Objections

The Subcommittee received two Objections to the Applicant’s Motion: (i) an Objection filed by Windaction; and (ii) an Objection filed by Allen/Levesque Group of Intervenors.

Windaction asserts that the Applicant’s Motion for Protective Treatment is premature because the parties do not currently seek to file into the record the documents the Applicant seeks to protect. Windaction further argues that the public should have access to these documents under the Right to Know law (RSA 91-A), so that it can independently ascertain the Applicant’s ability to construct and operate the Facility in compliance with the Certificate. Windaction asserts that non-disclosure of said documents will limit its opportunity to prepare for and conduct proper cross-examination and, consequently, will violate its due process rights.

Similarly, the Allen/Levesque Group of Intervenors argues that it should be allowed to review the documents that the Applicant seeks to protect so that it can participate in this docket in a meaningful manner.

The intervenors agreed to sign a confidentiality agreement in order to obtain access to the documents the Applicant seeks to protect.

IV. STANDARD OF REVIEW

A state agency must undertake a three step analysis to determine whether information should be exempt from public disclosure pursuant to the Right to Know law, RSA 91-A:5, IV. *See Lambert v. Belknap County*, 157 N.H. 375, 382-383 (2008); *Lamy v. Pub. Utils. Comm’n*,

152 N.H. 106, 109 (2005). The first prong of the analysis is to determine if the Applicant has identified a privacy interest. *Lambert*, 157 N.H. at 382. If a privacy interest is invoked then the agency must assess whether there is a public interest in disclosure. *Id.* Disclosure should inform the public of the activities and conduct of the government. *Id.* at 383. If disclosure does not serve that purpose then disclosure is not required. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

V. ANALYSIS

1. Investment Amount and Cost of Other Projects

The intervenors' interest in obtaining information about the amount invested and total cost of the Projects in which Mr. Weitzner, Mr. Manahilov, Ms. Valdovinos, Mr. Shaw, Walden Green Energy, LLC, Walden Renewables, LLC, and RWE Supply & Trading were involved is unclear. Other Projects have no bearing on the Subcommittee's evaluation of the Project in this docket. Furthermore, assuming that this information is sought to impeach the witnesses or evaluate their experience, the amount invested in other Projects has no bearing on the credibility or expertise of a witness. At the same time, the amount invested and total costs of other Projects represent highly sensitive commercial information that, if disclosed, may undermine the Applicant's financial position and ability to compete in the market. The Applicant's interest in non-disclosure outweighs the intervenors' interests in the disclosure of said information. The Applicant's request to protect information related to the amount invested and total cost of the Projects in which Mr. Weitzner, Mr. Manahilov, Ms. Valdovinos, Mr. Shaw, Walden Green Energy, LLC, Walden Renewables, LLC, and RWE Supply & Trading were involved is granted.

2. Financial Documents

A Certificate of Site of Facility may only be granted if, among other requirements, the Applicant demonstrates that it has the financial capacity to construct and operate the Project in accordance with the Certificate. *See* 162-H:16, IV(a). In order to address the Applicant's ability to operate and construct the Project in accordance with the Certificate, the intervenors should have access to relevant financial documents. MOUs or other agreements or contracts with financing institutions, letters of interest from debt and tax equity providers, and *pro forma* financial statements directly relate to and demonstrate the extent of the Applicant's financial ability to construct and operate the Project. The Applicant argues, however, that MOUs or other agreements, or contracts with financing institutions, letters of interest from debt and tax equity providers, and *pro forma* financial statements contain highly sensitive confidential information, the disclosure of which would jeopardize the Applicant's ability to obtain financing for the Project and would put the Applicant in an unfavorable competitive position. It is clear that the information contained in these documents, if disclosed to third parties, may jeopardize the Applicant's competitive position. However, the public's interest in having access to this information and having an ability to address one of the fundamental requirements of the statute in a meaningful manner outweighs the Applicant's need to keep it confidential from the intervenors who agreed to execute a confidentiality agreement. The Applicant's request to keep confidential MOUs or other agreements, or contracts with financing institutions, letters of interest from debt and tax equity providers, and *pro forma* financial statements is denied in part and granted in part. MOUs or other agreements or contracts with financing institutions, letters of interest from debt and tax equity providers, and *pro forma* financial statements will not be disclosed or made available to the public. However, if any party to this docket seeks disclosure

of these documents, they may file a motion setting forth the reason for the disclosure and follow the procedures set forth below, including the execution of a confidentiality agreement.

3. Contracts with Third Parties

In order to receive a Certificate of Site of Facility, among other requirements, the Applicant must demonstrate that it has the managerial and technical capacity to construct and operate the Project in accordance with the Certificate. *See* 162-H:16, IV(a). The Applicant relies on contracts and an affiliation with a number of contractors in order to establish its ability to construct and operate the Project. In order to verify the Applicant's claim, the parties in this docket should have the ability to review and verify contracts between the Applicant and its contractors. The public interest in access to these documents is high. However, these contracts contain information that, if disclosed to third parties, may impact the Applicant's competitive position. The intervenors do not seek disclosure of this information to third parties. They simply seek access to the information so that they can verify statements made by the Applicant in this docket. A confidentiality agreement protects the documents from disclosure to third parties. The intervenors' interest in reviewing these documents outweighs the Applicant's interest to protect such documents from disclosure to third parties. The Applicant's request to keep confidential the following documents is denied in part and granted in part. The (i) Balance of Plant Contract with Reed & Reed; (ii) Preconstruction Service Agreement with Reed & Reed; (iii) Reed & Reed's cost estimates; (iv) Turbine Supply Agreement with Siemens; and (v) Service and Maintenance Agreement with Siemens will not be disclosed or made available to the public. However, if any party to this docket seeks disclosure of these documents, they may file a motion setting forth the reason for the requested disclosure and follow the procedures set forth below, including the execution of a confidentiality agreement.

4. Information About Power Purchase Agreements

The Applicant seeks the Subcommittee to keep “information about” Power Purchase Agreements confidential. The Applicant fails to specify the information it seeks to protect. The Applicant asserts that it is in the process of negotiating Power Purchase Agreements and has provided some “information” to Counsel for the Public. The Applicant does not provide any information to the Subcommittee identifying or explaining the subject matter of the “information.” Without understanding the information the Applicant seeks to protect, the Subcommittee cannot conduct a balancing test and cannot determine whether such information is exempt from the Right to Know law. The Applicant’s request to protect “information about” Power Purchase Agreement(s) is denied.

VI. TREATMENT OF CONFIDENTIAL INFORMATION

The following documentation and information shall be treated as confidential and shall not be disclosed to the public: (i) protected information related to the amount invested and total cost of the Projects in which Mr. Weitzner, Mr. Manahilov, Ms. Valdovinos, Mr. Shaw, Walden Green Energy, LLC, Walden Renewables, LLC, and RWE Supply & Trading were involved; (ii) MOU’s or other agreements or contracts with financing institutions; (iii) letters of interest from debt and tax equity providers; (iv) pro forma statement; (v) Balance of Plant Contract with Reed & Reed; (vi) Preconstruction Service Agreement with Reed & Reed; (vii) Reed & Reed’s cost estimates; (viii) Turbine Supply Agreement with Siemens; and (ix) Service and Maintenance Agreement with Siemens. The confidential information contained in said documents will be available for review by the members of the Subcommittee without the need to sign a confidentiality agreement. Subcommittee members may review the confidential material at the offices of the Site Evaluation Committee without participation by parties.

If a party to these proceedings, other than Counsel for the Public, seeks access to the protected information, they must file a motion identifying the reason for such access and execute a protective agreement in the form set forth and attached hereto¹. A true copy of the Motion and confidentiality agreement shall also be forwarded to the Applicant. Only parties² authorized by the presiding officer, after receipt of the executed protective agreement, shall be afforded access by the Applicant to the confidential information. The parties shall not make any copies of such information or use the information for purposes other than the preparation for, and conduct of, the proceedings in this docket.

Counsel for the Public has an important statutory role in the proceedings before the Committee. Full and vigorous participation of Counsel for the Public is necessary to insure the goals of RSA 162-H. Therefore, the protected information referenced in this Order shall be disclosed to Counsel for the Public without execution of a confidentiality agreement. However, Counsel for the Public shall not further disclose such information without a further order from the Committee.

Unless otherwise ordered, the parties shall not reference the confidential information during public proceedings in this docket or at any time in public. Upon completion of this proceeding and any resulting appeals, the parties, with the exception of Counsel for the Public, shall destroy any notes referencing the confidential information and return all confidential information to the Applicant. Within sixty days thereafter, each party shall certify to the

¹ Information related to the amount invested and total cost of the Projects in which Mr. Weitzner, Mr. Manahilov, Ms. Valdovinos, Mr. Shaw, Walden Green Energy, LLC, Walden Renewables, LLC, and RWE Supply & Trading were involved need not be disclosed.

² ¹ A "Party" or "Parties" to the SEC Proceeding include any individual or organization, and their attorney, who have been granted intervenor status in the SEC Proceeding by the presiding officer or chairman, pursuant to Site 202.11

Applicant, with a copy to the Administrator of the Committee, that said notes have been destroyed and all confidential information has been returned. The rights of the parties under this Order are not assignable and may not be transferred in any manner.

Unless otherwise ordered, any future requests for a protective order, which are subsequently granted by the Presiding Officer, will be handled with the same procedures detailed above.

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

A handwritten signature in black ink, appearing to read 'Robert R. Scott', is written over a horizontal line.

Robert R. Scott, Presiding Officer
Site Evaluation Committee

EXHIBIT A

THE 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**

CONFIDENTIALITY AGREEMENT

I, _____, hereby certify that I am a Party to the above-captioned proceeding and in connection with my interests therein, I request to be given access to the following Confidential Information maintained by the Site Evaluation Committee: _____.

I further certify that I have read the Site Evaluation Committee's protective order issued in the above-captioned matter, understand it and agree to be bound by it. I understand that this Exhibit A does not authorize my access to the above Confidential Information until I have signed and delivered it to counsel for Antrim Wind Energy, LLC, and until it has been provided to the Site Evaluation Committee by said counsel.

Date: _____

Signature of Party to Docket No. 2015-02

¹ A "Party" or "Parties" to the SEC Proceeding include any individual or organization, and their attorney, who have been granted intervenor status in the SEC Proceeding by the presiding officer or chairman, pursuant to Site 202.11.