

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2018-01

Re: Petition for Declaratory Ruling of the Antrim Wind Opponents

**ORDER ON MOTION TO WAIVE FILING FEE
AND NOTICE OF PUBLIC HEARING**

June 8, 2018

This Order denies the Petitioners' Motion to Waive the filing fee requirement in RSA 162-H:8-a, II.

I. Introduction

On April 6, 2018, 104 individuals, commissions, and entities filed a Petition for Declaratory Ruling of the Antrim Wind Opponents and a Motion to Waive the filing fee. The Petitioners request relief from the statutory requirement to pay a filing fee in the amount of \$3,000.

On April 27, 2018, Antrim Wind Energy, LLC (AWE) filed a Motion to Dismiss Petition for Declaratory Ruling. The Petitioners objected. On May 22, 2018, AWE filed a request to treat its Motion to Dismiss as an Objection in the Alternative in the event that the Motion to Dismiss is denied.

On May 31, 2018, the Subcommittee held a hearing and denied the Petitioners' Motion to Waive the filing fee. This Order memorializes that decision.

II. Positions of Parties

Under RSA 162-H: 8-a, II(d)(2), the filing fee for a petition for a declaratory ruling is \$3,000. The Petitioners believe that waiving the filing fee is in the public interest. They state that the Petition was filed under protest "being unable to pursue an appeal of the SEC's prior denial of the Petitioners' requests for relief, but requiring redress." They argue that it is in the public interest to waive the filing fee under these circumstances and that the waiver will not

disrupt the orderly and efficient resolution of the proceeding. The Petitioners do not assert that they are indigent or otherwise unable to pay the fee.

AWE argues that the Subcommittee cannot waive the filing fee because it is mandatory and that the statute identifies only limited circumstance where filing fees do not apply. *See* RSA 162-H:8-a, IV. AWE asserts that this is not one of those circumstances and that the request for waiver of the filing fee should be denied. AWE acknowledges that N.H. Code Admin. Rules Site 202.15 permits the Subcommittee to waive its rules, but argues that it would be contrary to law to allow an administrative agency to waive a statutory requirement.

III. Analysis and Findings

The rules of statutory interpretation are well-settled in New Hampshire:

When construing statutes and administrative regulations, we first examine the language used, and, where possible, we ascribe the plain and ordinary meanings to words used. Words and phrases in a statute are construed according to the common and approved usage of the language unless from the statute it appears that a different meaning was intended. Additionally, we interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result. We can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.

Bovaird v. N.H. Dep't of Admin. Servs., 166 N.H. 755, 758-759 (2014) (citations and quotations omitted).

RSA 162-H:8-a, I, states that: “[e]xcept as provided in paragraph IV, a person filing with the committee an application . . . or any other petition or request for the committee to take action, shall pay to the committee at the time of filing a fee determined in accordance with the fee schedule described in paragraph II.” RSA 162-H:8-a, II(d) sets forth the filing fees for administrative proceedings, including the fee for filing a petition for declaratory ruling that will be heard by a three-member committee of \$3,000. RSA 162-H:8-a, IV, identifies a specific type of proceeding, a petition for committee jurisdiction, that does not require a filing fee.

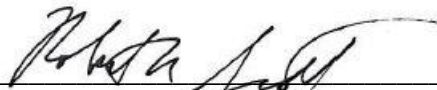
“[A] tribunal that exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation.” *Appeal of Campaign for Ratepayers’ Rights*, 162 N.H. 245, 250 (2011) (quotation and citation omitted). The plain language of RSA 162-H:8-a, II requires the Petitioners to pay the filing fee. The Subcommittee, as a limited jurisdiction tribunal, does not have the authority to waive the requirements of its enabling statute. The Motion to Waive the filing fee is denied.

Counsel for the Petitioners shall advise the Administrator no later than June 11, 2018, whether the Petitioners will pay the filing fee. Subject to the Petitioners paying the filing fee, a public hearing on the Petition for Declaratory Ruling and the Motion to Dismiss shall be conducted on June 18, 2018, beginning at 9:00 a.m., at the offices of the Public Utilities Commission, 21 South Fruit Street, Concord, NH.

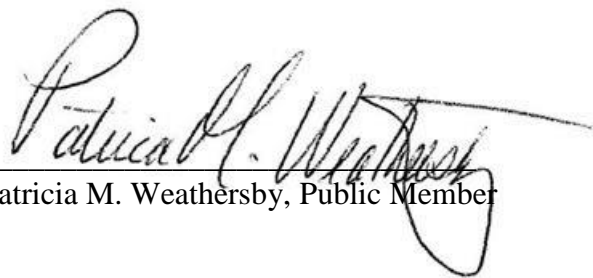
SO ORDERED this eighth day of June, 2018.



Martin P. Honigberg, Presiding Officer
Site Evaluation Committee
Commissioner and Chair
Public Utilities Commission



Robert R. Scott, Vice-Chair
Site Evaluation Committee
Commissioner
Department of Environmental Services



Patricia M. Weathersby, Public Member