

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2019-01

**Antrim Wind Energy, LLC
Motion to Modify Certificate of Site and Facility**

March 19, 2019

ORDER ON MOTION TO MODIFY CERTIFICATE OF SITE AND FACILITY

This Order grants a Motion to Modify the Certificate of Site and Facility filed by Antrim Wind Energy, LLC.

I. INTRODUCTION

On March 17, 2017, the Site Evaluation Committee (Committee) approved an application filed by Antrim Wind Energy, LLC (AWE) to site, construct, and operate nine Siemens SWT-3.2-113 direct drive turbines each with a nameplate generating capacity of 3.2 MW and a total nameplate capacity of 28.8 MW, and associated infrastructure (Project). The Committee issued an Order and Certificate of Site and Facility with Conditions (Certificate) to AWE in Docket No. 2015-02.

As a condition of the Certificate at Appendix I, the original Wetlands Permit authorized: (i) the dredge and fill of 9,121 square feet of palustrine wetlands; (ii) the dredge and fill of 156 square feet within an intermittent stream; and (iii) the temporary impact on 60 square feet within a perennial stream. The Wetlands Permit authorized permanent impacts on 708 square feet of wetlands identified as AN-31 for grading associated with: (i) the new Public Service of New Hampshire (PSNH) substation pad cut and fill; and (ii) installation of a transmission tap line between the new PSNH substation and the existing transmission line, including three wooden transmission pole structures and guy wires.

AWE and PSNH determined that timber matting must be used for access and as a work pad for the equipment used to install the transmission structures. The timber matting will be placed in wetlands next to the PSNH substation and will cause an additional temporary impact on approximately 10,000 square feet of wetlands (approximately 9,896 square feet to AN-31 and approximately 104 square feet to AN-32). AWE requests a modification of the Certificate, authorizing the additional temporary impact on 10,000 square feet of wetlands.

II. PROCEDURAL HISTORY

On January 10, 2019, AWE filed a Motion to Modify the Certificate (Motion) that included a copy of the Wetlands Permit Application filed with the New Hampshire Department of Environmental Services (DES) requesting approval the additional 10,000 square feet of temporary wetlands impacts.

On January 17, 2019, the Site Evaluation Committee Administrator (Administrator) sent a letter to the Attorney General informing him that the Motion had been filed and requesting notification if he wished to appoint Counsel for the Public. On the same day, the Administrator sent letters to the appropriate municipal representatives in Antrim, Bennington, Deering, Hancock, Hillsborough, Nelson, Stoddard, and Windsor, informing them that the Motion had been filed and the various ways that the Towns could participate in the proceeding.

On January 24, 2019, the Chair of the Committee appointed a 3-person subcommittee (Subcommittee).

On January 25, 2019, an Order and Notice of Prehearing Conference and Petitions to Intervene was issued. The Order and Notice set a deadline of February 5 for filing petitions to intervene and scheduled a prehearing conference on February 19. The Order and Notice also

provided contact information for submitting public comments. The Notice and Order was posted on the Committee's website.

On January 29, 2019, the Order and Notice was published in the *Union Leader* and the *Monadnock Ledger-Transcript*.

On February 1, 2019, a Notice of Adjudicative Hearing and Deliberations was issued, scheduling a public hearing on February 26, 2019.

On February 7, 2019, Senior Assistant Attorney General K. Allen Brooks was appointed to serve as Counsel for the Public.

On February 8, 2019, DES submitted a letter to the Administrator recommending approval of the Wetlands Permit Application, subject to a number of conditions.

The prehearing conference was held on February 19, 2019, and no parties sought to intervene.

III. POSITIONS OF THE PARTIES

A. Antrim Wind Energy

AWE argued that the requested amendment is limited in scope and only affects the impact of the Project on water quality and the natural environment. AWE asserted that the requested change will not affect the Committee's findings on aesthetics, historic sites, air quality, or public health and safety. AWE argued the impact on water quality and the natural environment is limited and does not present any cause for the Subcommittee to alter the original conclusion that the Project will not have an unreasonable adverse effect on water quality or the natural environment because the impacts are temporary in nature.

AWE prefiled the testimony of Dana Valleau. APP Ex 2. Mr. Valleau testified that timber mats may damage vegetation above the ground level and cause soil disturbance and soil

compaction. Once removed, AWE will restore disturbed and compacted soils to the original condition and any disturbed areas will be seeded with a native wetland seed mix. The restored wetland will function the same as it did before the temporary impacts. Mr. Valleau concluded that the additional temporary wetlands impacts will not have an unreasonable effect on water quality and the natural environment. APP Ex 2, at 3-4.

Upon questioning by the Subcommittee, Mr. Valleau explained that the request to modify the Certificate stems from a change in the design of the tap line transmission structure.

Tr. 02/26/2019, at 11-12, 18. Rather than the original three wooden pole structure design that would be directly embedded, a single pole will be installed in a container system that will require the use of engineered backfill (crushed rock). Tr. 02/26/2019, at 12 and 18. AWE explained that any permanent impact caused by the change in construction method are minor and are already provided for in the original Wetlands Permit allowing for up to 708 square feet of permanent impacts in AN-31. Tr. 02/26/2019, at 36-38.

B. Counsel for the Public

Counsel for the Public reviewed the Motion and determined that AWE complied with DES administrative rules that apply to minor temporary wetlands impacts.

Tr. 02/26/2019, at 24-25. Counsel for the Public pointed out that the impacts are only one-half of the maximum temporary wetland impacts allowed for minor impact projects. Counsel for the Public does not oppose the Motion. Tr. 02/26/2019, at 24. After consultation with DES, Counsel for the Public determined that the request was not unusual or outside the bounds of what is often permitted. Tr. 02/26/2019, at 27.

IV. DEPARTMENT OF ENVIRONMENTAL SERVICES–WETLANDS BUREAU

DES determined that the requested modification constitutes a minor project under Env-Wt 303.03(h), because the temporary wetland impacts will be less than 20,000 square feet. *See* APP Ex 4. DES recommends that the Subcommittee approve the Wetlands Permit Application, subject to the conditions in APP Ex 4, and appended to this order as Attachment 2.

Neither AWE or Counsel for the Public object to the DES conditions.

V. STANDARD OF REVIEW

To issue a certificate, the Committee must find that:

- (a) the applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the Certificate;
- (b) the site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies;
- (c) the site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety; and
- (d) issuance of a Certificate will serve the public interest.

See RSA 162-H:16, IV.

The statute contemplates that certificates may be modified. *See* 162-H:8-a, II(5) (establishing a filing fee for a motion to modify a certificate). However, the statute itself does not contain criteria used to determine whether a certificate should be modified.

In prior dockets, the Committee sought to determine whether the proposed modification would undermine the findings supporting issuance of the original certificate.

See Docket No. 2010-01, Application of Groton Wind, Final Decision and Order on Outstanding

Issues, September 21, 2015, pp. 29-30; and Docket No. 1998-01, Application of Newington Energy, Decision and Order On Conditional Request for Authorization to Construct One AST and to Revise NEL's Certificate Consistent Therewith, Dated June 29, 2001, p 3.

VII. COMMITTEE ANALYSIS AND FINDINGS

RSA 162-H:4, I(c) requires the Committee to monitor the construction and operation of any energy facility granted a certificate. The modification sought by the Applicant does not undermine the findings that supported the grant of the original Certificate. In fact, the installation of timber matting during construction is necessary to assure that there are not additional permanent impacts to the wetlands.

The change in design and the construction methods will not require significant expense and will not undermine the financial capability of AWE to assure construction and operation of the Project in accordance with the conditions of the Certificate. The proposed modification does not change the technical or managerial capabilities of AWE.

The proposed modifications are within the original footprint of the Project and simply involve a different pole design and construction method and will not unduly interfere with the orderly development of the region. There has been no objection from the Town of Antrim or any surrounding community.

The main driver of the proposed modification is the need to temporarily disturb the wetland area by using timber matting during construction. The use of timber matting and subsequent restoration will protect the wetland from permanent impacts. The change in pole design from a three pole configuration to a single pole will be less aesthetically impactful.

The proposed modification does not increase the area of permanent impact as described in the original wetlands permit. However, the Subcommittee is concerned that the Wetlands

Permit Application filed in this docket did not contain a description of the change in design and construction methods, particularly with regard to the use of engineered backfill. APP Ex 3.

As a condition of this approval, AWE shall notify the DES Wetlands Bureau before undertaking construction, regarding the specific means and methods to be used to install the tap pole in order to ensure compliance.

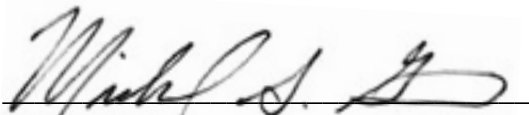
Historic resources have not been identified in the area of AN-31 and AN-32. The proposed modification does not create an unreasonable adverse effect on aesthetics, historic sites, air or water quality, or the natural environment. The proposed modification is in the public interest as it will permit a necessary change in the design and construction methods without additional permanent impacts.

VII. ORDER


It is hereby ordered:

1. The Motion of Antrim Wind Energy, LLC to modify the Certificate of Site and Facility is granted;
2. The Wetlands Permit issued by the Department of Environmental Service, Wetlands Bureau on February 8, 2019, is approved and becomes a condition of the Certificate of Site and Facility and is appended to this order as Attachment 2; and
3. Prior to commencement of construction in wetland areas AN-31 and AN-32, the Applicant shall notify the Wetlands Bureau of the means and methods to be used for installing the tap pole so that the Wetlands Bureau can confirm compliance with the terms and conditions in Attachment 2.

SO ORDERED this nineteenth day of March, 2019.



Michael S. Gaimo, Presiding Officer
Site Evaluation Committee
Commissioner
Public Utilities Commissioner



John J. Duclos, Designee
Administrator
Waste Management Division
Department of Environmental Services



Thomas R. Eaton, Public Member
Site Evaluation Committee

ATTACHMENT 1

**Exhibits
Docket No. 2019-01**

Exhibit Number	Description
APP Ex 1	Antrim Wind Energy, LLC Motion to Modify Certificate of Site and Facility
APP Ex 2	Prefiled Testimony of Dana Valleau on behalf of Antrim Wind Energy, LLC
APP Ex 3	New Hampshire Wetlands Permit Application and Cover Letter dated January 4, 2019
APP Ex 4	NHDES Recommendation of Approval with Conditions and Cover Letter dated February 8, 2019

ATTACHMENT 2

APP Ex 4



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 08, 2019

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit St., Suite 10
Concord, NH 03301

Re: Application of Antrim Wind Energy, LLC
Motion to Modify Certificate of Site and Facility
Site Evaluation Committee (SEC) Docket No. 2019-01

Dear Ms. Monroe:

This letter is to notify you that the NH Department of Environmental Services (NHDES) Water Division staff have completed their technical review of the application and have made a final decision on the parts of the application that relate to DES permitting or regulatory authority relative to a Wetland Permit. NHDES recommends approval of the application with the conditions that are enclosed with this letter.

This concludes NHDES review of the project which we hope will assist the SEC to complete its project evaluation process and render a final decision. If you have any questions, please contact me at 271-2951 or email at:

Rene.Pelletier@des.nh.gov

Sincerely,

Rene Pelletier, Assistant Director
Water Division

cc: Michael Iacopino, Esq., Brennan, Lenehan
Robert Scott, Commissioner
Clark Freise, Assistant Commissioner
Collis Adams, Wetlands Bureau Administrator
Jack Kenworthy, Antrim Wind Energy, LLC

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ANTRIM WIND PARK, NHSEC DOCKET #2019-01
WETLANDS BUREAU
FEBRUARY 8, 2019 FINAL DECISION

RECOMMEND APPROVAL WITH THE FOLLOWING PERMIT CONDITIONS:

PROJECT DESCRIPTION:

Temporarily impact 10,000 square feet of palustrine scrub shrub wetland to place timber matting within an existing cleared utility right-of-way for installing a tap into the electrical transmission line which will connect the Antrim Wind project to the grid.

PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with revised plans by TRC dated January 04, 2019, as received by the NH Department of Environmental Services (DES) on January 11, 2019.
2. Prior to construction, any plan revisions or changes in construction details or sequences shall be submitted to DES for review and approval.
3. Any further alteration of areas on this property that are within the jurisdiction of the DES Wetlands Bureau will require a new application and further permitting by the Bureau.
4. No construction activities shall occur on the project after expiration of the approval unless the approval has been extended by the New Hampshire Energy Facility Site Evaluation Committee (SEC).
5. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and remain in place until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
6. Work shall be conducted in a manner so as to minimize turbidity and sedimentation to surface waters and wetlands.
7. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, in all cases with a minimum of 20 feet of undisturbed vegetated buffer.
8. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tackifiers on slopes less than 3:1 or netting and pinning on slopes steeper than 3:1.
9. Where construction activities occur between November 30 and May 1, all exposed soil areas shall be stabilized within 1 day of establishing the grade that is final or that otherwise will exist for more than 5 days. Stabilization shall include placing 3 inches of base course gravels, or loaming and mulching with tack or netting and pinning on slopes steeper than 3:1.
10. The contractor responsible for completion of the work shall utilize techniques described in the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).
11. To prevent the introduction of invasive plant species to the site, the permittee's contractor(s) shall clean all soils and vegetation from construction equipment and matting before such equipment is moved to the site.
12. The permittee shall control invasive plant species by measures agreed upon by the NHDES Wetlands Program if any such species is found in the stabilization areas during construction or during the early stages of vegetative establishment.
13. A certified wetlands scientist or qualified professional, as applicable, shall monitor the project during construction to verify that all work is done in accordance with the approved plans and narratives, adequate siltation and erosion controls are properly implemented, and no water quality violations occur. A follow-up report including photographs

of all stages of construction shall be submitted to the NHDES Wetlands Program within 60 days of final site stabilization.

14. Restoration of temporary wetland impact areas shall have at least 75% successful establishment of wetlands vegetation after two (2) growing seasons, or they shall be replanted and re-established until a functional wetland is replicated in a manner satisfactory to the DES Wetlands Program.
15. The permittee or permittee's contractor shall conduct a follow-up inspection in October or November following the first and second growing seasons to review the success of the restoration areas and schedule remedial actions if necessary. Follow-up inspection reports shall be submitted to NHDES by the end of each calendar year.
16. Restoration of temporary impact areas shall not be considered successful if sites are invaded by nuisance species such as common reed or purple loosestrife during the first full growing season following the completion of construction. The permittee shall submit a remediation plan to DES that proposes measures to be taken to eradicate nuisance species during this same period.

FINDINGS:

1. This project is a Minor Project per Administrative Rule Env-Wt 303.03(h), as temporary wetland impacts are less than 20,000 square feet to complete the project.
2. The applicant identified an area where temporary wetland impacts are necessary to install timber mats and allow equipment access to install a tap into the existing electrical transmission line.
3. Per discussions with NHDES, the applicant submitted a wetland restoration plan on January 23, 2019 which details the methods for restoring the temporary wetland impact areas.
4. The applicant has provided evidence which demonstrates that this proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per Rule Env-Wt 302.03. The applicant worked directly with Eversource to minimize wetland impacts from construction equipment, and the wetland impacts requested are temporary in nature, with wetland areas being restored upon completion.
5. The applicant has demonstrated by plan and example that each factor listed in Rule Env-Wt 302.04(a), Requirements for Application Evaluation, has been considered in the design of the project.
6. The NHDES wetland application recommendations and the Motion to Modify the SEC Certificate will be reviewed and decided by the SEC.