



THOMAS B. GETZ
Direct Dial: 603.230.4403
Email: thomas.getz@mcclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

September 17, 2019

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: Antrim Level LLC—Petition for Declaratory Ruling

Dear Ms. Monroe:

Enclosed please find, pursuant to Site 203.01, an original and ten copies of a Petition for Declaratory Ruling or, in the alternative, Motion for Expedited Approval of Change in Ownership or Ownership Structure. As explained in the Petition, Antrim Level LLC (“Antrim Level”) is nearing completion of construction and seeks the Site Evaluation Committee’s (“SEC”) clarification of a financing-related issue on an expedited basis in order to avoid delay in achieving commercial operation.

Pursuant to RSA 162-H:8-a II(d) (5), Antrim Level requests the appointment of a three-member subcommittee to review this Petition. Accordingly, enclosed is a check for \$3,600.

Sincerely,

A handwritten signature in blue ink that reads "Thomas B. Getz". The signature is stylized and includes a large flourish at the end.

Thomas B. Getz

TBG:slb

Cc: Allen Brooks, Chief
Environmental Protection Bureau
NH Department of Justice

McLane Middleton, Professional Association
Manchester, Concord, Portsmouth, NH | Woburn, Boston, MA

McLane.com

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2019-_____

**ANTRIM LEVEL LLC
PETITION FOR DECLARATORY RULING
OR, IN THE ALTERNATIVE,
MOTION FOR EXPEDITED APPROVAL OF
CHANGE IN OWNERSHIP OR OWNERSHIP STRUCTURE**

Antrim Level LLC (“Antrim Level”) by and through its attorneys, McLane Middleton, Professional Association, respectfully submits this Petition for Declaratory Ruling or, in the alternative, Motion for Expedited Approval of Change in Ownership or Ownership Structure (“Petition and Motion”) and requests the appointment of a three-member subcommittee under RSA 162-H:4-a to consider and decide the matter.

As explained below, Antrim Level is currently negotiating a commitment for tax equity financing with Citicorp North America, Inc. (“Citi”), consistent with testimony filed in Docket No. 2018-03, *Joint Petition of Walden Green Energy Northeast Wind, LLC, Walden Antrim, LLC and Antrim Level, LLC for Approval of the Transfer of Membership Interests in Antrim Wind Energy, LLC* (“Transfer Proceeding”). Antrim Level believes that the manner in which the tax equity financing will be structured and obtained does not require Site Evaluation Committee (“SEC” or “Committee”) approval. However, if the Committee determines that the tax equity financing constitutes a change in the ownership or ownership structure of Antrim Wind Energy, LLC (“AWE”) or the ownership or ownership structure of Antrim Level that requires approval, Antrim Level requests the Committee’s approval on an expedited basis. Counsel for the Public supports expedited approval of the change in ownership or ownership structure, if the Committee reaches that question, but does not take a position on the Petition for Declaratory Ruling.

I. Background

On March 17, 2017, in Docket No. 2015-02, *Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility*, (“Siting Proceeding”), the SEC issued its Decision and Order Granting Certificate of Site and Facility with Conditions (“Siting Decision”) to AWE. At the time, AWE was wholly owned by Walden Green Energy, LLC through two subsidiary entities. The SEC authorized AWE to construct a renewable energy facility consisting of nine Siemens wind turbines, each with a nameplate generating capacity of 3.2 MW for a total nameplate capacity of 28.8 MW, and associated facilities. Among other things, the SEC found, subject to certain conditions, that “the Applicant demonstrated, by a preponderance of the evidence, that it has sufficient financial capability to construct and operate the Project.” Siting Decision, p. 76.

Subsequently, in the Transfer Proceeding, by a Decision and Order Approving the Transfer of Ownership Interests in Antrim Wind Energy, LLC (“Transfer Decision”), issued February 15, 2019, the SEC approved the transfer from Walden Green Energy, LLC to Antrim Level, finding that Antrim Level “has adequate financial capability to construct and operate the Project in accordance with the terms and conditions of the Certificate.” Transfer Decision, p.12. While the ownership interests in AWE were transferred to Antrim Level, AWE continues to be the Certificate holder. In the Transfer Proceeding, Antrim Level described TransAlta Corporation’s (“TransAlta”) corporate structure, Antrim Level’s place within that structure, and the proposed financing for the construction and operation of the Project.

The Transfer Decision provided, among other things, that the terms and conditions from the Siting Decision remained in effect. Those terms and conditions include an ordering clause providing that “the Applicant shall immediately notify the Site Evaluation Committee of any change in ownership or ownership structure of the Applicant or its affiliated entities and shall

seek approval of the Subcommittee of such change.” As explained below, Antrim Level is merely proceeding with tax equity financing as described in the Transfer Proceeding, and it does not believe that the Committee in the Transfer Decision or in the Siting Decision intended to require SEC approval of a routine tax equity financing or the manner in which it is structured and obtained. Antrim Level therefore seeks a declaratory ruling from the Committee to that effect.

II. Tax Equity Financing

As shown in Attachment A, which was attached to the testimony of Brent Ward, TransAlta’s Managing Director & Treasurer, and Kelly Wist, TransAlta’s Managing Director of Mergers and Acquisitions, in Docket No. 2018-03, Antrim Level is a subsidiary of TransAlta Holdings U.S., Inc., (“TransAlta U.S.”) which in turn is a subsidiary of TransAlta. As described in the testimony of Messrs. Ward and Wist, construction financing would be provided through a combination of cash on hand and an existing credit facility. Pre-filed Direct Testimony of Brent Ward and Kelly Wist, p. 7. Once commercial operation is achieved, however, the permanent capital structure, as described in the testimony, would “include TransAlta equity and third party tax equity, as is customary for multiple U.S. wind projects owned by large [corporations].” Pre-filed Direct Testimony of Brent Ward and Kelly Wist, p. 7.

TransAlta U.S. currently owns 100% of the membership interests in Antrim Level, which in turn owns 100% of the membership interests in AWE. As shown in Attachment B, in order to implement the tax equity financing for the Project, TransAlta U.S. will form a new entity, Bobcat Equity Holdings, LLC (“Bobcat Equity”), which will be wholly-owned by TransAlta U.S. In turn, Bobcat Equity will form a new wholly-owned entity, Bobcat Holdco, LLC (“Bobcat Holdco”). TransAlta U.S. will contribute 100% of the membership interests in Antrim Level to Bobcat Equity. Upon satisfaction of certain conditions precedent related

to the tax equity financing for the Project, the following transactions will occur: (i) Citi will make its capital contribution in respect of AWE to Bobcat Holdco, (ii) Bobcat Equity will contribute 100% of the membership interests in Antrim Level to Bobcat Holdco, (iii) Bobcat Holdco will issue or will have issued passive non-controlling Class A membership interests to Citi and will convert Bobcat Equity's existing membership interests to Class B membership interests, and (iv) Citi and Bobcat Equity will enter into or will have entered into an amended and restated operating agreement for Bobcat Holdco. These types of investments are commonly referred to as tax equity investments or tax equity financing because such investments meet Internal Revenue Service standards necessary for non-controlling equity investors to receive a substantial portion of the federal tax benefits available to renewable energy projects.

In support of this Petition and Motion, Antrim Level is submitting pre-filed testimony on behalf of TransAlta by Brent Ward and on behalf of Citi by Anu Yadav. Mr. Ward's testimony explains the purpose of tax equity financing in general, describes how the tax equity investment will be accomplished in this instance, shows that the investment by Citi is consistent with industry practice and the SEC's previous finding that Antrim Level has the financial capability to construct and operate the Project, and demonstrates that any subsequent transfer of Citi's interest will not affect Antrim Level's financial capability nor will it require a change in the management structure of Bobcat Holdco. Ms. Yadav's testimony confirms that Citi intends to commit to make a tax equity investment in the Project, that it routinely makes such investments, and that, upon making such an investment, Citi is a non-controlling investor with no day-to-day role in the operation of the Project.

Ms. Yadav explains that consistent with Citi's tax equity investments in other projects across the United States, Citi will invest in an intermediate holding company - Bobcat Holdco, which will be operated pursuant to an amended and restated operating agreement. TransAlta U.S., through its wholly owned subsidiary – Bobcat Equity, will be the managing member of Bobcat Holdco and will retain the authority to manage, direct and control the day-to-day activities of Bobcat Holdco, Antrim Level, and AWE. Ms. Yadav explains that Citi's membership interests in Bobcat Holdco will be non-controlling and limited to certain voting/consent rights over the actions of Bobcat Holdco with respect to AWE which are necessary for Citi to protect its investment, including, but not limited to, incurring certain types of indebtedness, selling or transferring assets, making capital expenditures above a certain threshold, and changing the purpose of Bobcat Holdco, Antrim Level, or AWE. Mr. Ward explains that the Class A membership interests retain their non-controlling nature (consisting of the limited voting/consent rights necessary for the holder of Class A membership interests to protect its investment), even if such membership interests are fully or partially transferred by Citi to a third party investor.

The tax equity investment by Citi does not affect the day-to-day activities of Antrim Level. For such day-to-day activities, the formation of Bobcat Equity and Bobcat Holdco does not change TransAlta U.S.'s or TransAlta's roles in managing, directing, controlling and retaining responsibility for Antrim Level. Instead, the creation of different classes of membership interests facilitates Citi's investment and ability to make use of the available federal tax benefits.

III. Appointment of Three-Member Subcommittee

Under RSA 162-H:4-a, III, a subcommittee of three members, consisting of two agency members and one public member, may be established to review this Petition and Motion.

Antrim Level believes that this is a straightforward matter regarding the applicability of the Siting Decision and Transfer Decision to Antrim Level's tax equity financing and therefore does not rise to the level that would require the attention of the Committee itself or a seven-member subcommittee.

In light of the fact that construction is nearing completion, granting Antrim Level's request would facilitate an orderly transition to commercial operation. Specifically, Antrim Level expects that it could achieve commercial operation in mid-November if this issue were to be resolved promptly, which would lead to the close of tax equity financing in late November. To the extent this issue remains unresolved, commercial operation would be delayed, which in turn would delay the closing of tax equity financing. Obviously, any delay results in lost revenues to Antrim Level but such delay could also affect Antrim Level's power purchase agreements, potentially leading to, in the worst case, their termination. Consequently, Antrim Level respectfully requests that the Committee act as expeditiously as possible.

IV. Petition for Declaratory Ruling

A. Standard of Review

RSA 541-A:1, V provides that a declaratory ruling is "an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency." In addition, Site 203.01 provides that any person may submit a petition asking the SEC for a ruling on any matter within its jurisdiction. Such a petition must 1) set forth facts that are definite and concrete, 2) not involve a hypothetical situation, 3) implicate the rights or responsibilities of the petitioner, and 4)

be within the SEC's jurisdiction. As demonstrated above, Antrim Level's request on its face meets these requirements.

Antrim Level therefore asks the Committee to determine the applicability of the Siting Decision and the Transfer Decision to the tax equity financing described herein. As shown below, the tax equity financing comports with the testimony filed in the Transfer Proceeding, does not change the ownership structure of Antrim Level as a single purpose entity, and simply accommodates the tax equity investment by Citi in the normal course.

B. Analysis

The issue before the Committee is whether the manner in which the tax equity financing is structured and obtained here requires SEC approval. Antrim Level believes that it does not because, first, the Transfer Decision anticipated such financing and, second, the manner in which the financing is structured and obtained is not inconsistent with the Siting Decision. As shown in Attachment B, the tax equity investment by Citi is structured by adding two intermediate holding companies between Antrim Level and TransAlta U.S. to facilitate an investment by Citi into Bobcat Holdco. The salient issue is that the ownership of AWE remains unchanged. Antrim Level continues to be a single purpose entity that owns 100% of the membership interests in AWE, and TransAlta continues to be the ultimate parent of the managing member of Bobcat Holdco with all that entails.

In approving the transfer of ownership interests in AWE to Antrim Level, the SEC acknowledged that the operation of the Project "would be funded through a combination of equity and tax equity." Transfer Decision, p. 4. The SEC also found that the "testimony established that there has been interest in the Project from well-funded tax-equity investors.¹

¹ Mr. Ward specifically testified in the Transfer Proceeding that Citi was one of the "large tax equity investors in the U.S." and that TransAlta had engaged in conversations with Citi, and other large financial institutions, in 2017 and

TransAlta demonstrated that it has substantial experience in attracting tax-equity investors to invest in its projects.” Id. at 11. Furthermore, the SEC concluded that the “TransAlta corporate structure and use of a single purpose entity to construct and operate the Project is common in the industry.” Id. Finally, the SEC observed that TransAlta’s witnesses credibly testified that Antrim Level could rely on the support of its parent companies.

The SEC’s analysis and findings in its Transfer Decision indicate that it understood TransAlta’s plans for, and the expected nature of, the financing that would be used for the operation of the Project. There is nothing in the SEC’s analysis and findings that suggests that it expected or intended that Antrim Level seek express approval of a particular tax equity investment or the formation of a corporate entity within TransAlta to effectuate such investment. Accordingly, for the foregoing reasons, Antrim Level asks the Committee to rule that the manner in which Citi’s tax equity investment will be structured and obtained does not require SEC approval.

V. Motion for Expedited Approval

A. Standard of Review

In SEC Docket No. 2011-01, *Motion of Berlin Station, LLC for Amendment of the Certificate of Site and Facility*, the Committee applied the following standard when reviewing a motion to amend or modify a certificate, which is instructive here to the extent the Committee determines that the manner in which the tax equity investment is accomplished amounts to a change that requires SEC approval. “If the proposed changes do not undermine the initial findings of the Committee, then that would favor granting the Motion. And, if the proposed

2018 to gauge the level of interest in tax equity investment despite the U.S. tax reform. Tr. Day 1/AM, pp. 83-84. As the testimony demonstrates, Citi was expressly contemplated as a potential tax equity partner at the time of the Transfer Proceeding.

amendments are determined...to be reasonable, that would also favor the granting of the Motion to Amend.” Transcript of Public Meeting, January 10, 2013, p. 74. Accordingly, the Committee must determine whether its original findings under RSA 162-H:16 are affected. For the reasons set forth below, and in the attached pre-filed testimony, Antrim Level’s actions are reasonable and do not undermine the Committee’s initial findings.

B. Analysis

Neither the tax equity financing nor the manner in which it will be structured and obtained affects the Committee’s findings in either the Siting Decision or the Transfer Decision. As described above, the Certificate will continue to be held by AWE and Antrim Level will continue to hold 100% of the membership interests in AWE. The corporate structure above Antrim Level will change only insofar as TransAlta U.S. will create two new subsidiary entities, Bobcat Equity and Bobcat Holdco, to hold the membership interests in Antrim Level before and after Citi makes its capital contribution in respect of the Project. Distinct classes of membership interests, i.e., Citi’s non-controlling Class A membership interests and TransAlta’s managing Class B membership interests, will be established at Bobcat Holdco to facilitate the tax equity financing as described briefly above and described further in the testimony of Mr. Ward.

Furthermore, with respect to Citi and its investment, Mr. Ward and Ms. Yadav explain in their testimony that tax equity financing is standard practice in the industry, that the approach used here is common, that Citi routinely makes such investments, and that all of Citi’s investment will be made on the commercial operation date. In addition, Mr. Ward points out that Citi may transfer its interest to a third party investor, and that such a transfer would not affect the management structure of Bobcat Holdco or Antrim Level’s capability to operate the Project.

Finally, in accordance with the terms and conditions of the financing transaction, before the tax equity investment is made Bobcat Equity will serve as the Manager of Antrim Level and will have the authority, control, and responsibility to operate and manage the Project in accordance with the Certificate and all applicable laws. After the tax equity investment, Bobcat Holdco will serve as the Manager of Antrim Level and will have the authority, control and responsibility to operate and manage the Project in accordance with the Certificate and applicable laws. Bobcat Equity and Bobcat Holdco will delegate the operation and management of the Project to TransAlta and TransAlta will enter into a management, operations, and maintenance agreement with Antrim Level. Thus, Antrim Level's financial capability to operate and maintain the Project in compliance with the terms and conditions of the Certificate will not be affected.

VI. Conclusion

The manner in which TransAlta effects the Citi tax equity investment is consistent with both the way in which TransAlta finances its projects and industry practice. Moreover, it does not affect Antrim Level's financial capability to construct and operate the Project in accordance with the terms and conditions of the Certificate. To that point, the Transfer Decision and the Siting Decision must be read together and doing so evinces that the Committee contemplated the approach employed here, thus obviating any further approval. Finally, the Committee in the Transfer Proceeding found: "The proposed corporate structure defined by TransAlta is not much different than the current ownership of AWE when the Certificate was issued." Transfer Decision, p. 11. That finding applies equally now, to the additional details concerning the mechanics of the tax equity financing, as it did then.

Accordingly, Antrim Level requests that the Subcommittee rule that Antrim Level does not require SEC approval of its tax equity financing in the manner described herein. In the alternative, Antrim Level asks the SEC to approve the change in ownership or ownership structure as the case may be. In either case, Antrim Level asks that the Committee expressly acknowledge or authorize that any transfer by Citi, or a successor, of the non-controlling Class A membership interests in Bobcat Holdco to a third party investor does not require SEC approval.

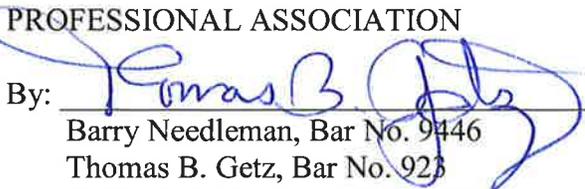
WHEREFORE, Antrim Level LLC respectfully requests that the Committee:

- A. Appoint a three-member subcommittee to review the Petition and Motion;
- B. Rule that the tax equity financing described herein does not require SEC approval, or, in the alternative;
- C. Approve the tax equity financing and the manner in which it is structured and obtained;
- D. Determine that any transfer by Citi, or a successor, of the non-controlling Class A membership interests in Bobcat Holdco to a third party investor does not require further approval; and
- E. Grant such other and further relief as the Subcommittee deems appropriate.

Respectfully submitted,
Antrim Level LLC
By its attorneys,

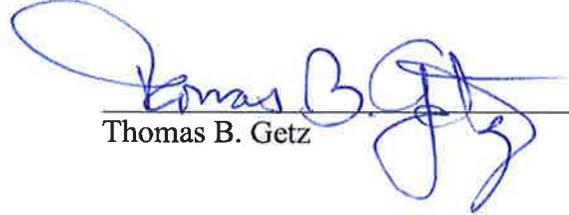
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: September 17, 2019

By: 
Barry Needleman, Bar No. 9446
Thomas B. Getz, Bar No. 923
11 South Main Street, Suite 500
Concord, NH 03301 | (603) 226-0400
barry.needleman@mclane.com
thomas.getz@mclane.com

Certificate of Service

I hereby certify that, on the 17th day of September, 2019, an original and 10 copies of the Petition and Motion were delivered to the New Hampshire Site Evaluation Committee ("SEC") and an electronic copy was provided to the SEC and Counsel for the Public.


Thomas B. Getz

TransAlta Corporation Simplified Corporate Ownership Structure

